

**STATE OF MICHIGAN  
SUPREME COURT**

**Appeal from the  
Court of Appeals, State of Michigan  
Docket No. 312100, COA: 312100  
Kurtis T. Wilder Presiding Judge**

**In the Matter of AJR, Minor**, \_\_\_\_\_

**Supreme Court No. 147522**

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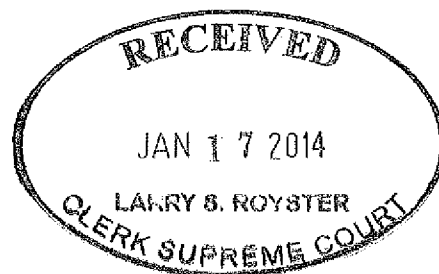
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## **QUESTIONS PRESENTED FOR REVIEW**

*Amicus curiae* Yvon D. Roustan and Estela M. Roustan will address the following issues as framed by the Michigan Supreme Court:

- 1. Whether the Court of Appeals properly interpreted the statutory phrase “the parent having legal custody of the child” in the stepparent adoption statute, MCL 710.51(6), as necessarily referring to “the” sole parent with legal custody**

Trial Court held: Did not consider the question.

Court of Appeals held: Yes.

Respondent-Appellee: Contend that the answer should be Yes.

Petitioners-Appellants answer: Contend that the answer should be No.

*Amicus Curiae answers:* Yes.

- 2. Whether the phrase “legal custody” in sec 51(6) is synonymous with the concept of joint custody in the Child Custody Act, MCL 722.26a(7)(b), whereby “the parents share decision-making authority as to the important decisions affecting the welfare of the child**

Trial Court held: Did not consider the question.

Court of Appeals held: Did not consider the question.

Respondent-Appellee: Contend that the answer should be Yes.

Petitioners-Appellants answer: Contend that the answer should be No.

*Amicus Curiea answers:* Yes.

- 3. If the Court of Appeals did not err in interpreting the statute, what, if any, remedy is available to the petitioners in this case that is consistent with the general purposes of the Adoption Code, MCL 710.21a**

Trial Court held: Did not consider the question.

Court of Appeals held: Did not consider the question.

Respondent-Appellee answers: Contend that the answer should be No consistent remedy is available.

Petitioners-Appellants answer: Contend the answer should be Yes.

*Amicus Curiae answers:* No consistent remedy is available.

**STATEMENT OF INTEREST OF AMICUS CURIAE YVON D. ROUSTAN  
AND ESTELA M. ROUSTAN GRAND PARENTS OF AJR AND PARENTS OF  
PIERRE DOMINIQUE ROUSTAN FATHER OF AJR**

*Amicus curiae* Yvon D. Roustan and Estela M. Roustan submit this brief to the Michigan Supreme Court *In the Matter of AJR, Minor*.

Yvon D. Roustan, the father of Pierre Dominique Roustan, Appellee in this case and paternal grandfather of AJR, is a retired attorney, a chemist with a Bachelor of Arts in Chemistry, and a Master in Business Administration. He practiced law for 32 years from 1976 through 2008 as a trial and appellate attorney, at the State, Federal and the U.S, Supreme Court level, concerned with family and criminal law cases, including termination of parental rights and many other areas of the law. He has no financial interest in the outcome of this case. He is interested in justice for Pierre Dominique Roustan, Appellee and his grandson AJR, ***the minor adoptee who is not represented by anyone*** and for any parent or child in similar circumstances. He is also a friend of the court interested in the integrity and proper functioning of the judicial and legislative system.

Estela M. Roustan, the mother of Pierre Dominique Roustan, Appellee in this case and paternal grandmother of AJR is a non-practicing attorney, a chemist with a Bachelor of Arts in Chemistry, a Master in Early Childhood Education, and a Master in Leadership. She has taught in Early Childhood for 44 years. She has no financial interest in the outcome of this case. She is

interested in justice for Pierre Dominique Roustan, Appellee and her grandson AJR, ***the minor adoptee who is not represented by anyone*** and for any parent or child in similar circumstances. She is also a friend of the court interested in the integrity and proper functioning of the judicial and legislative system.

This Court decision *In the Matter of AJR, Minor* will have a widespread impact in the field of children's law and does not merely serve the interests of the particular litigants. The argument presented is supported by existing law and is a wise and legally justified extension of the law with a reasonable expectation of prevailing. We submit this *amicus curiae* brief on behalf of the interest of all children to secure the most appropriate outcome in stepparent adoption proceedings and to protect the natural, fundamental and constitutional rights of the parent and the child. Within this context, we request the Court to hold the "Stepparent Adoption Statute" unconstitutional and affirm the Appellate Court's order for the reasons we discuss below.

## **I. INTRODUCTION**

As stated in the "Respondent-Appellee's Response to Application for Leave to Appeal", **Attachment "A"**, at pp vii-viii, we quote:

*"The Court of Appeals decision gave effect to the statutory intent of the Legislature as enunciated in MCL 710.21a(b): "to provide procedures and services that safeguard and promote the best interest of each adoptee in need of adoption and that will protect the rights of all parties concerned."*

*When viewed from the point of view of the father, the termination of parental rights forever severs all relations between parent and child, depriving the parent of the care, custody and control of his child, mankind's most fundamental, natural and constitutional right. This fundamental right is 'older' than the Bill of Rights, Smith v Organization of Foster Families, 431 US 816 at 845, and an element of the "liberty" guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States, In re LaFlure, 48 Mich App 377, 385, 210 NW2d 482, Iv.den. 380 Mich 814 (1973).*

*The Stepparent Adoption Statute provides a bare minimum inquiry into the question of fitness of the noncustodial parent, without procedural safeguards for reunification between the parent and the child, which is within the scope of the purpose of the statute: "to safeguard and promote the best interest of each adoptee in need of adoption and that will protect the **rights of all parties** concerned." Id. (emphasis ours).*

*When viewed from the point of view of the child, the parent whose parental rights have been terminated no longer exists. The situation is as if the parent had died depriving the child, within the context of the stepparent adoption, of a fundamental, natural and constitutional right to the care, love and affection of his biological parent, which is in violation of the Constitution with a minimum beginning inquiry into the question of the best interest of the child and without adequate procedural safeguards for the need of the child and reunification within the scope of the purpose of the statute: "to safeguard and promote **the best interest** of each adoptee in **need** of adoption and that will protect the rights of all parties concerned." Id. (emphasis ours)*

**Is it any wonder then that when a right of such a fundamental and important nature is weakened**, the Legislature restricts the termination of the rights of the noncustodial parent during a stepparent adoption, to situations where the parent does not have legal custody?" (emphasis ours)

The United States Constitution, through the Due Process Clauses of the Fifth and Fourteenth Amendments, recognizes a presumption that a child's parents are fit. As Justice O'Connor explained in *Troxel v Granville*, there is "presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult

decisions.” 530 US 57, 68; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (plurality opinion) (internal quotation marks omitted). The Constitution further recognizes “a presumption that fit parents act in the best interest of their children.” *Id.* These are the fundamental principles that are the backbone of our constitutional system.

## **II. BACKGROUND**

*Amicus curiae* herein adopts the Statement of Jurisdiction found in Petitioners-Appellants Brief and the Statement of Facts and Material Proceedings found in Respondent-Appellee’s “Brief in Response to Application for Leave to Appeal”, **Attachment “A”**, at pp 1-13.

## **III. ANALYSIS**

We address at this point the questions presented for review, question 1) of the Order of the Michigan Supreme Court of October 23, 2013:

- A. Whether the Court of Appeals properly interpreted the statutory phrase “the parent having legal custody of the child” in the stepparent adoption statute, MCL 710.51(6), as necessarily referring to “the” sole parent with legal custody**

We rely 100% in the analysis of the Court of Appeals below.

Consider the alternative that the Appellate Court erred in interpreting the above cited statutory phrase and as a consequence of that error the spouse of “any parent having legal custody of the child” and not just the spouse of the *sole* parent with legal custody may petition to adopt the child. In that case the spouse of the Appellee Pierre Dominique Roustan who has since remarried and has joint legal custody, may petition as stepmother and be eligible to adopt AJR under the provisions of the Stepparent Adoption Statute. However, this scenario does not conform to reality and is meaningless. The parent having legal custody of the child is the parent having both physical and legal custody under the Stepparent Adoption Statute which necessarily refers to “the” sole parent with legal custody as that term is interpreted under the Child Custody Act.

Nonetheless, Appellants Mr. and Mrs. Merrill, through their attorney, would argue that “legal custody” means “the legal right to physical custody of the child,” whatever that means, under the adoption statute and therefore regardless of whether “legal custody” was granted to the Appellee in his divorce under the Child Custody Act, the alleged “different meaning” of “legal custody” under the Adoption Code determines whether or not the Court of Appeals is right. Appellants would argue that Pierre, the biological father of AJR, has no significant custody right whatsoever under the Stepparent Adoption Statute and he can be deprived of his parental rights without further inquiry, except for the limited conditions of the Stepparent

Adoption Statute. The bond and attachment between the biological parent and his child and the natural and constitutional rights of the biological parent and his child are thus totally unimportant. Non-custody alone trumps nature and the constitutional rights of the biological father and his child under the Adoption Code and the Stepparent Adoption Statute.

Opposing counsel would no doubt argue that the fact that Pierre, the appellee herein, was granted "legal custody" under the Child Custody Act is meaningless, since under the Adoption Code that would mean that he, the biological father, and Mrs. Merrill, the biological mother, possess the "legal right to physical custody of the child," whatever that means, bringing back the nonsensical scenario contemplated before, that the stepmother wife of Pierre Roustan is a legitimate stepmother eligible to adopt under the meaning of the Stepparent Adoption Statute ultimately concluding that the Child Custody Act and the Stepparent Adoption Statute are inconsistent with each other, and one or the other or both are unconstitutional and need to be harmonized.

This result is not logical, or legally justified, or necessary since both laws are "*in pari materia*" which brings us to question 2) of the Order of the Michigan Supreme Court of October 23, 2013:

- B. Whether the phrase "legal custody" in sec 51(6) is synonymous with the concept of joint custody in the Child Custody Act, MCL 722.26a(7)(b), whereby "the parents share decision-making**



**authority as to the important decisions affecting  
the welfare of the child"**

As to this issue we concur 100% with the analysis discussed and argued in the "Respondent-Appellee's Response to Application for Leave to Appeal", **Attachment "A"**, at pp 25-33 when discussing this issue under the synonymous term "*in pari materia*" and we do not discuss it in this brief. We adopt and incorporate it by reference.

However, consider the following additional discussion:

The meaning of the term "legal custody" is not defined in the Michigan legislature but said meaning, which signifies significant decision-making authority, whether *shared* or not, as between parents, guardians or other custodians holding the power to make important decisions affecting the welfare of the child, is expressly contemplated in the Adoption Code in MCL 710.51(7) clarifying MCL 710.51(6) above.

MCL 710.51(7) reads as follows:

"(7) Unless otherwise ordered by the court, the prospective adoptive parents with whom a child is placed pursuant to a court order under this section may consent to all medical, surgical, psychological, educational, and related services for the child."

Said significant decision-making authority concerning such important decisions affecting the welfare of the child that was previously possessed jointly by the mother and the father after their divorce, is terminated for the biological father and transferred, to the prospective adoptive parent.

Now it is clearly *shared* as between the stepfather and the natural mother. The biological father no longer has any rights and is barred from making any significant decisions affecting the welfare of his child no matter what statute is applied: the Child Custody Act or the Stepparent Adoption Statute.

The meaning of custody, legal custody and physical custody in Michigan legal jurisprudence is not complicated.

### **1. The *Plain and Legal* Meaning of Custody**

Random House Webster's College Dictionary (1995) defines "custody as:

1. Keeping; guardianship; care . . . .4. (esp. in a divorce) the right of determining the residence, care, schooling, etc., of a child or children. Black's Law Dictionary (6<sup>th</sup> ed) similarly provides that "custodian" is the "general term to describe anyone who has charge or custody...*In the Matter of Justin Anthone Huisman, Minor. Anthony Huisman and Deborah Huisman, Petitioners-Appellees v Michelle M. Huisman*, No. 206872. Ottawa Juvenile Court LC No. 97-000186-NA, June 19<sup>th</sup>, 1998.

Black's Law Dictionary (9<sup>th</sup> ed) defines "custody", n. (15c) as:

2. Family Law. The care, control and maintenance of a child awarded by a court to a responsible adult. Custody involves legal custody (decision-making authority) and physical custody (care giving authority), and an award of custody grants both rights.

## **2. The *Plain* meaning of "Legal Custody" and "Physical Custody"**

Michigan statutory law does not specifically define legal custody or otherwise allegedly clearly distinguish it from the concept of what is referred to as physical custody. However, the Child Custody Act does give some guidance in its definition of joint custody.

Pursuant to MCL 722.26a, joint custody is defined as when a child resides alternatively for specific periods of time with each of the parents; or when the parents share decision-making authority as to the important decisions affecting the welfare of the child. Appellant misuses this premise to assert that "legal custody" is tantamount to "the legal right to physical custody of a child."

At least one commentator has stated that MCL 722.26 refers to what is often referred to as "legal custody." *Detroit Legal News, Legal View: Legal Custody, what does it really mean*, by Amy A. Yu, May 26, 2010, <http://www.legalnews.com/detroit/1001079>.

Black's Law Dictionary (9<sup>th</sup> ed) defines "legal custody." as:

3. The authority to make significant decisions on a child's behalf, including decisions about education, religious training, and healthcare. Family Law. (Decision making authority),

Black's Law Dictionary (9<sup>th</sup> ed) defines "physical custody" as:

Family Law. Care giving authority.

According to Duhaime's Family Law Dictionary:

"Legal custody refers to the responsibility for making major decisions affecting the child's welfare, and legal custodians are entitled to make the major decisions regarding the child's welfare and is a status that may be held by a parent who does not have physical custody, which refers to the responsibility for physical care and immediate supervision of the child.

"A natural parent will always have legal custody of a child absent legal termination of those rights.'

[http://www.duhaime.org/legalDictionary/L/Legal Custody.aspx](http://www.duhaime.org/legalDictionary/L/Legal%20Custody.aspx).

A most appropriate case dealing with "joint legal custody" in Michigan is the case of *Lombardo v Lombardo*, 202 Mich App 151, 507 NW2d 788, (1993) where the court held that there is no such thing as allocation of Decision-Making as between "legal custody" and "physical custody."

This case applies when the parents *share* joint legal custody.

In *Lombardo* Defendant father had physical custody but the parents shared joint legal custody. A dispute ensued over whether the child should be enrolled in a program for gifted children. The trial court determined that the parent with primary physical custody should make this decision. The Court of Appeals vacated the trial court's judgment, deciding that it had erred in determining that the primary physical custodian had the authority to resolve any disputes concerning the important decisions affecting the child's welfare.

The Appellate Court held that the trial court must determine the best interest of the child in resolving disputes concerning important decisions affecting the child's welfare that arise between joint custodian, pursuant to

MCL 722.25, i.e., the Court must determine what is in the best interest of the child.

**3. The Meaning of "Physical Custody" is different from that of "Legal Custody"**

Although Michigan statutory law does not specifically define legal custody it defines physical custody in the Michigan Custody Act, MCL 722.1102.

MCL 722.1102 provides definitions within the Uniform Child-Custody Jurisdiction and Enforcement Act. Pursuant to MCL 722.1102, Sec. 102:

**(n) "Physical custody" means the physical care and supervision of a child.** (emphasis ours)

This definition is the same as the *plain* meaning definition of "physical custody" In Black's Law Dictionary (9<sup>th</sup> ed) cited above, to wit: "Care Giving authority", with the addition of the word "supervision"

Merriam-Webster Dictionary defines "supervision" as a noun:

the action, process, or occupation of supervising; *especially*: a critical watching and directing (as of activities or a course of action).  
Cite: "Supervision." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 4 Oct. 2013. <<http://www.merriam-webster.com/dictionary/supervision>>.

Merriam-Webster Dictionary further defines "supervising" as a transitive verb:

to be in charge of (someone or something) : to watch and direct (someone or something), superintend, oversee. For example: the mother or the teacher "supervised" the child playing in the playground. (our example)

Therefore, both the *plain* and the *legal* definition of "physical custody" are the same. However, both the plain and legal definition of "physical custody" are **different** from the *plain* definition of "legal custody" as defined in Black's Law Dictionary (9<sup>th</sup> ed) legal custody 3.: "The authority to make significant decisions on a child's behalf, including decisions about education, religious training, and healthcare." Family Law. (Decision making authority).

There is no question that "legal custody" has a distinct meaning from "physical custody." "Custody" involves two distinct components "legal custody" (decision-making authority) and "physical custody." (care giving authority). "Legal custody" is not . . . "Physical custody." "Legal custody" is not a "legal right to 'physical custody' of a child" under Michigan law.

Therefore, as reasoned above, the answer to question 2) of the Order of the Michigan Supreme Court of October 23, 2013: "whether the phrase "legal custody" in sec 51(6) is synonymous with the concept of joint custody in the Child Custody Act, MCL 722.26a(7)(b), whereby "the parents share decision-making authority as to the important decisions affecting the welfare of the child," is that they are synonymous and have the same meaning:

***"The authority to make significant decisions on a child's behalf, including decisions about education, religious training, and healthcare."***

This brings us now to question 3) of the Order of the Michigan Supreme Court of October 23, 2013:

- C. If the Court of Appeals did not err in interpreting the statute, what, if any, remedy is available to the petitioners in this case that is consistent with the general purposes of the Adoption Code, MCL 710.21a**

### **Summary of the Argument**

The "Stepparent Adoption Statute" MCL 710.51(6) is inconsistent with the general purpose of the Michigan Adoption Code, MCL 710.21a, because it is unconstitutional under the XIV Amendment of the Constitution of the United States while the Michigan Adoption Code is constitutional, and is not susceptible, as written, to more than one reasonable construction; the only interpretation is actually unconstitutional and does not merely raise constitutional doubts. Therefore the Cannon of Constitutional Avoidance is inapplicable under such circumstances.

There is no such thing as a presumption of parental *unfitness*. The presumption of parental fitness compels the need for reunification and rehabilitative efforts even when the biological parent has not had previous custody of his child recognizing that biological fathers have a valid interest in a relationship with their child, and children have a reciprocal interest in maintaining the parent-child relationship. The Department of Human Services or the party seeking to terminate a parent's parental rights must

first take steps to reunify a noncustodial biological parent with his children and must assume, after showing that rehabilitative efforts have proved unsuccessful, the burden of going forward with evidence of unfitness, if any.

There is an independent constitutional right of a child to the care, support, assistance, affection, dependency and love to his or her biological parent, which is inseparable from the child's attachment to the biological parent. This right is not protected under the current interpretation of the law and its application by the courts. This attachment bond of a child for his parent and the parent-child relationship is of paramount importance to the child's welfare and is at the heart of a child's healthy development; this bond is too fundamental and important to be suppressed for the mere convenient purpose of facilitating stepparent adoptions. The courts must first evaluate the need for such adoptions, the need for reunification, the *right* and the need of the child to be heard, and a full determination of the fitness of the parent whose parental rights are being terminated. Legal doctrines and procedures must both facilitate the formation and maintenance of the parent-child relationship and dependency relationships to protect children from the vulnerability created when marriage relationships go awry, i.e., in divorce situations and split custody arrangements, and finally

The natural right of the child is an interest far more precious than any liberty or property right under the XIV Amendment of the Constitution and is independent of the custody rights of the parent as the child's right is derived



from the *inalienable* natural bond of attachment between the child and his parent which is older than any recognized civil right and any constitution.

### **Argument**

The issue of unconstitutionality was not discussed and was not argued in the "Respondent-Appellee's Response to Application for Leave to Appeal" except to the extent of showing the intent of the legislature in enacting the Stepparent Adoption Statute, i.e., to facilitate the stepparent adoption of children in "need" of adoption by weakening

*"mankind's most fundamental, natural and constitutional right, a right 'older' than the Bill of Rights, by means of minimizing the inquiry into the question of fitness of the noncustodial parent, without procedural safeguards for reunification between the parent and the child allegedly in "need" of adoption, while attempting to ameliorate the harm done by restricting the termination of the rights of the noncustodial parent during a stepparent adoption, to situations where the parent does not have legal custody"* (paraphrasing **Attachment "A"**, at pp vii-viii)

We must respectfully submit that there is **no** remedy available to the petitioners in this case that is consistent with the general purposes of the Adoption Code, MCL 710.21a and for that reason the Stepparent Adoption Statute is unconstitutional.

Since AJR our grandson and minor adoptee in this case has **no** legal representation in this court nor at any stage in the proceedings below, we proceed from the point of view of

*AJR, our minor grandson, who lost his biological father Pierre depriving him, within the context of the Stepparent Adoption Statute, of his fundamental, natural and constitutional right to the care, love and affection of his father, in violation of the Constitution without even a minimum*

*beginning inquiry into the question of his best interest and without adequate procedural safeguards for his need for reunification within the scope of the purpose of the statute: "to safeguard and promote **the best interest** of each adoptee in **need** of adoption. (paraphrasing **Attachment "A"** at p viii)*

However, before proceeding with this argument we make this brief commentary regarding the procedure and evidence in the lower courts:  
The fundamental right of both the father and the child is violated not only by the judicial system and the legislature but by judges and parents who have no empathy for the family and the bond of "attachment" between a father and his child nor the harm that their indifference causes.

This is demonstrated by the high disregard of the evidence during the trial court of the facts admitted into evidence that AJR called his father "**Daddy Pierre**", (emphasis ours), **Attachment "B"** transcript at 17, Vol 1, line 1-3, *Id* at 85, Vol 2, line 21, and voice recordings and emails, admitted in evidence, *Id* at 5, Vol 2, and the testimony of all the parties discussed in more detail below, clearly demonstrating the love and attachment of Pierre and AJR and disregarded by the trial court judge. It is also demonstrated by the testimony of the mother appellant herein, where she fails to read emails from Pierre to his son AJR *Id* at 15, Vol 1, line 21-25.

This fundamental right is also violated by the lack of knowledge of judges who are insensitive to the fundamental rights of the family, intent only in the purely mechanical application of poorly engineered statutes of questionable social merit, devoid of human value, detached from reality and

by the Appellate Court's indifference to the constitutional issue concerned only with the strict statutory interpretation of the language without regard to its ultimate effect. The Appellate Court ought to know better, for they are trained attorneys and judges of great experience aware of the dangers of unconstitutional and unjust acts in violation of the general purpose of the Adoption Code and the Constitutional rights of the parties.

1. **The only interpretation of the "Stepparent Adoption Statute" is unconstitutional under the XIV Amendment of the Constitution of the United States and not susceptible, as written, to more than one reasonable construction, and therefore the Canon of Constitutional Avoidance is inapplicable**

The main reason the "Stepparent Adoption Statute" MCL 710.51(6) is inconsistent with the general purpose of the Michigan Adoption Code, MCL 710.21a, is because the "Stepparent Adoption Statute" is unconstitutional under the XIV Amendment of the Constitution of the United States while the Michigan Adoption Code is constitutional. The "Stepparent Adoption Statute" is not susceptible, as written, to more than one reasonable construction; the only interpretation is actually unconstitutional and does not merely raise constitutional doubts. The Cannon of Constitutional Avoidance is inapplicable under such circumstances, Einer Elhauge, *Statutory Default Rules: How to Interpret Unclear Legislation*, Harvard University Press (2008), p. 237-39, ISBN 978-0-674-02460-1; *United States v Jin Fuey Moy*, 241 U.S. 394m 401 (1916).

The "Stepparent Adoption Statute" is inconsistent with the general purpose of the Adoption Code, MCL 710.21a precisely because while the Adoption Code is constitutional and consistent with the XIV Amendment of the Constitution, the "Stepparent Adoption Statute" deprives unnecessarily the parent of mankind most fundamental, natural and constitutional right to the care, custody and control of the child, and deprives the child of his fundamental, natural and constitutional right to the care, love and affection of his biological parent, fundamental rights 'older' than the Bill of Rights, *Smith v Organization of Foster Families*, 431 US 816 at 845 and protected by the Due Process Clause of the Fourteenth Amendment, *Stanley v Kramer*, 455 US 745, 752-54 & n7; 102 S Ct 1388; 71 L Ed 599 (1982). "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments." *Mathews v Eldridge*, 424 US 319, 332; 96 S Ct 893; 47 L Ed 18 (1976).

This applies to the nature of the government function in the "Stepparent Adoption Statute" and the private interest affected by the governmental action, *Stanley v Illinois*, 405 US 645, 650-51; 92 S Ct 1208; 31 L Ed 2d 551 (1972).

2. **The presumption of fitness compels the need for reunification even when the biological parent has not had previous custody of his children**

The United States Constitution, through the Due Process Clauses of the Fifth and Fourteenth Amendments, recognizes a presumption that a child's parents are fit. As Justice O'Connor explained in *Troxel v Granville*, there is "presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." 530 US 57, 68; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (plurality opinion) (internal quotation marks omitted). The Constitution further recognized "a presumption that fit parents act in the best interest of their children." *Id.* These are the fundamental principles that are the backbone of our constitutional system.

There is no such thing as a "presumption of *unfitness*." In the instant case the presumption of fitness was not in issue and there was never any need to rebut it, or for the Petitioners to assume the burden of going forward with evidence of unfitness or for Pierre Respondent-Appellee to assume the burden of rebutting such evidence of unfitness, but on the contrary, in this case the evidence clearly shows, through the admission of the mother, by Pierre's own testimony and by other relevant testimony that he is a good and loving father who did not abuse, neglect or harm his child, that he has no criminal record, nor any history of drug abuse or any conduct that in any manner harms his child. The evidence clearly shows that Pierre loves AJR and AJR loves him in return. See **Attachment "B"** to Amicus Curiae brief, transcript, at 17, Vol 1, line 1-7, *Id* at 85, Vol 2, line 2, 6-8,

21, *Id* at 9-10, Vol 2, line 25, line 1, *Id* at 32, Vol 2, line 16-20, *Id* at 35, Vol 2, line 5-9, 16-20, *Id* at 36, Vol 2, line 5-9, *Id* at 38, Vol 2, line 5-10, *Id* at 41, Vol 2, line 8-9.

Reunification services should be provided for a natural father who has legal custody of his child, is not unfit, loves his child, and is loved by him, even if the natural father cannot be said to be perfect, suffers mental health problems, loses his job, struggles with substance dependency, or encounters any of the other multitudinous personal crises that can make it difficult to meet his parental responsibilities, which, except for Pierre's financial and transportation difficulties, is not true in this case and are provided in many jurisdictions for natural parents who never had custody of their children, See, e.g., *Cal. Welf. & Inst. Code Ann.* §361.5(a) (West Supp. 2013); *Francisco G. v Superior Court*, 91 Cal. App. 4th 586, 596, 110 Cal. Rptr. 2d 679, 687 (2001) (stating that "the juvenile court 'may' order reunification services for a biological father if the court determines that the services will benefit the child"); *In re T. B. W.*, 312 Ga. App. 733, 734-735, 719 S. E. 2d 589, 591 (2011) (describing reunification services provided to biological father beginning when "he had yet to establish his paternity" under state law, including efforts to facilitate visitation and involving father in family " 'team meetings' "); *In re Guardianship of DMH*, 161 N. J. 365, 391-394, 736 A. 2d 1261, 1275-1276 (1999) (discussing what constitutes "reasonable efforts" to reunify a noncustodial biological father with his children in

accordance with New Jersey statutory requirements); *In re Bernard T.*, 319 S. W. 3d 586, 600 (Tenn. 2010) (stating that "in appropriate circumstances, the Department [of Children's Services] must make reasonable efforts to reunite a child with his or her biological parents or legal parents or even with the child's putative biological father").

Many jurisdictions apply a custodial preference for a fit natural parent over a party lacking this biological link. See, e.g., *Ex parte Terry*, 494 So. 2d 628, 632 (Ala. 1986); *Appeal of H. R.*, 581 A. 2d 1141, 1177 (D. C. 1990) (opinion of Ferren, J.); *Stuhr v Stuhr*, 240 Neb. 239, 245, 481 N. W. 2d 212, 216 (1992); *In re Michael B.*, 80 N. Y. 2d 299, 309, 604 N. E. 2d 122, 127 (1992). Cf. *Smith v Organization of Foster Families For Equality & Reform*, 431 U.S. 816, 845 (1977) (distinguishing a natural parent's "liberty interest in family privacy," which has its source "in intrinsic human rights," with a foster parent's parallel interest in his or her relationship with a child, which has its "origins in an arrangement in which the State has been a partner from the outset"). This preference is founded in the "presumption that fit parents act in the best interests of their children." *Troxel v Granville*, 530 U.S. 57, 68 (2000) (plurality opinion). " '[H]istorically [the law] has recognized that natural bonds of affection [will] lead parents' " to promote their child's well-being, *Ibid.* (quoting *Parham v J. R.*, 442 U.S. 584, 602 (1979)).

Placing on the party seeking to terminate a father's parental rights the burden of showing that the step is necessary as well as justified is a natural consequence of the presumption of fitness "For . . . natural parents, . . . the consequence of an erroneous termination [of parental rights] is the unnecessary destruction of their natural family." *Santosky v. Kramer*, 455 U.S. at 766, (1982) (internal quotation marks omitted). In any event, the question is not an issue in this case given the fact that the "Stepparent Adoption Statute" does not require a finding of unfitness, and that Pierre possesses love for his child and in turn is loved by him. Petitioners cannot show that rehabilitative efforts have proved unsuccessful, because Pierre is not in need of any rehabilitation.

**3. The attachment bond of a child for the care, support, assistance, affections, dependency, and love of his biological parent**

There is extensive social-science research establishing that, completely separating the parent from the child causes severe and permanent harm. One basic principle of this research tells us that children form with their parents, strong attachment bonds that play a role in healthy child development. These bonds depend on the quality and duration of care provided by the biological father and severing these attachment bonds can cause harsh, even permanent developmental harm to the child. See generally, e. g., Bowlby, John, *Attachment* (2d ed. 1982); Konner, Melvin, *Childhood* 84-87 (1st ed. 1991); Ainsworth, Mary D. Salter, *Attachment and*



*other Affectional Bonds across the Life Cycle, in Attachment Across the Life Cycle* 33-51 (Parkes et al. eds., 1991); *Attachment from Infancy to Adulthood* (Grossman et al. eds., 2005).

Attachment Relationships are a central factor in the development of the child's brains during a period of great growth, and thus lie at the heart of children's healthy development. ("As developmental science demonstrates attachment relationships are foundational in the formation of self, critical to healthy psychological adjustment, and necessary for the acquisition of self-regulation and social competence, capacities essential to meaningful autonomy.") ; Siegel, Daniel J., *The Developing Mind* 67-120 (1999).

(Studies indicate that the working models that develop early in life remain stable throughout the lifespan and continue to affect individual development of Interpersonal relationships, emotional regulation and coping mechanisms."). Onorato, Nicole M. *The Right to Be Heard*, 4 Whittier J. Child & Family Advocacy 491, 496, (2005).

In short, as one commentator summarized:

Extensive research, including several twenty-year longitudinal studies spanning the period from birth to young adulthood, has shown that a child's secure and healthy development depends on having one or more sensitive and responsive attachment figures who can correctly read signals for help, provide comforting support and useful assistance, and help the child learn to understand, appropriately express, and regulate emotions, understand social situations; and acquire important life skills. Shaver, Philip R., et al., *What's Love Got To Do With It?*, 16 Va. J. Soc. Pol'y & L., 491, 493 (2009).

Disruption of attachment relationships can permanently harm children. "Numerous empirical findings.... Provide a solid research basis for predictions of long-term harm associated with disrupted attachment and loss of a child's central parental love objects." Dyer Frank J. *Termination of Parental Rights in Light of Attachment Theory*, 10 Psych. Pub. Pol. 5, 11 (2004).

Children who form attachment bonds have a deep seated belief that they can depend on the continued love of the parent with whom they have the attachment. When one severs that bond, the child believes he is to blame and tends not to trust others. See Byrne, James G., et.al., *The Contribution of Attachment Theory to Child Custody Assessments*, 46 J. Child Psychol. & Psychiatry 115, 118 (2005).

These feelings, in turn, can lead to "aggression,.. and academic problems in school, and elevated psychopathology " Marty, Ana H., et al., *Supporting Secure Parent-Child Attachments*, 175 Early Childhood Dev. & Care 271,274(2005).

We find substantial literature documenting the adverse effects of disrupted-parent-child relationships on children's development and adjustment. " Kelly, Joan B. & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 Fam & Conciliation Cts. Rev. 297, 303 (2000); accord, e.g. Gauthier, Yvon, et al., *Clinical Application of Attachment theory in*

*Permanency Planning for Children in Foster Care*, 25 Infant Mental Health J. 379,394 (2004).

Application to this Case:

The following evidence elicited during the trial is relevant to show the emotional attachment between AJR and his father. The love, comfort and emotional support Pierre provided AJR through the early formative years during the marriage, limited after the divorce by lack of financial ability and public transportation.

After the divorce, Pierre exercised limited parenting time due to financial and transportation difficulties.

During the trial Mrs. Merrill testified and admitted that there was no bus service available between her home in Lowell and Mr. Roustan's home in Grand Rapids, *Id* at 19, Vol 1, line 13-16, she admitted that pursuant to the Judgment of Divorce, although Mr. Roustan was awarded parenting time, Monday, Tuesday and Friday from 3:00 pm to 7:00 pm., he was first required by her to call and gain permission, *Id* at 13, Vol 1, line 9-13 she admitted that Pierre visited the minor child on May 10, 2010 for AJR's birthday, *Id* at 7, Vol 1, line 6-9, she admitted that Pierre likewise requested parenting time on June 4, 2011, but averred that he declined to visit after learning that he would be permitted to see AJR for 2 hours. *Id* at 7, Vol 1, line 20-23.

Mrs. Merrill likewise admitted that Pierre exercised parenting time on Father's Day 2011 (June 19, 2011), *Id* at 7, Vol 1, line 24-25, *Id* at 8, line 1.

Mrs. Merrill stated that Pierre had requested parenting time on November 25, 2011. However, he cancelled the visitation on the evening of Thanksgiving, explaining he had car trouble, *Id* at 8, Vol 1, line 9-15, she averred that Pierre had one visit in 2012: April 20, 2012, *Id* at 8, Vol 1, line 17-20, and admitted that Pierre requested visits on April 25, April 27, May 2 and May 4, 2012, but that he subsequently cancelled, *Id* at 8, Vol 1, line 19-25. During the trial Mrs. Merrill, Appellant, testified that Mr. Roustan explained that after the divorce "that the reason he did not visit is because he had no money and no car", *Id* at 19, Vol 1, line 1-2, and that she did not assist in transporting the minor child for parenting time with Mr. Roustan despite the fact that he faced financial difficulties and had no transportation, *Id* at 19, Vol 1, line 9-16.

In regard to phone calls Mrs. Merrill admitted that Pierre called AJR on his birthday in 2012. However he was not able to talk to the child, *Id* at 9, Vol 1, line 1-4, admitting moreover that she did not have AJR call his father back *Id* at 37, Vol 1, line 17-18.

Mrs. Merrill admitted that there were times when Pierre would email and request a visit, and that she would say that AJR "was busy", *Id* at 13, Vol 1, line 17-20. Mrs. Merrill admitted that Mr. Roustan sent email to AJR,

but she chose to not read them to AJR, *Id* at 15, Vol 1, line 21-25, admitted that AJR referred to Pierre as "**Daddy Pierre**" and that she told AJR that "his dad loved him", (emphasis ours) *Id* at 17, Vol 1, line 1-7. Mrs. Merrill also admitted that she did not inform Pierre of AJR's extra-curricular activities, *Id* at 37, Vol 1, line 5-11.

Mrs. Merrill likewise admitted that AJR loves Pierre and that he has fun with his dad, *Id* at 17, Vol 1, line 3-7. She admitted the Pierre had requested contact with Aidan via Skype, but that did not occur because she was having computer issues, *Id* at 18, Vol 1, line 21-24.

When Mrs. Merrill was asked about visits AJR had with Pierre after the adoption petition was filed, the trial court did not allow any testimony beyond the date when Pierre was served with the petition: June 14, 2012, *Id* at 21, Vol 1, line 20-25. Pierre's attorney objected to that restriction however, pointing out that the fact that Pierre has had ongoing visits with AJR between May and July 2012 and was absolutely relevant to the child's best interest and the court's evaluation of same, *Id* at 21, Vol 1, line 7-9.

In regards to visits in May and June 2012, Mrs. Merrill testified that she could not recall specific dates, but that Pierre did "make more of an effort", *Id* at 22, Vol 1, line 9-13. She likewise admitted that she was not available for a May 23, 2012 visitation attempt by Pierre at the advice of her attorney, *Id* at 23, Vol 1, line 1-3, she also recalled that Pierre had a visit

after May 24, 2012, but that she did not recall the date, *Id* at 23, Vol 1, line 6-7.

Mrs. Merrill explained that she discussed the adoption with AJR. However, she denied telling AJR that if the adoption proceeded, that AJR would never be able to see Pierre again, *Id* at 27, Vol 1, line 15-17. Mrs. Merrill denied having knowledge of any abuse of AJR, *Id* at 33, Vol 1, line 22-24.

Mr. Merrill, Appellant, testified that Pierre had taken AJR to soccer practice in the past, *Id* at 49, Vol 1, line 21-25.

Pierre was the next witness to testify. He explained he lived in Grand Rapids with his wife and her two children, that he lost his job due to health reasons, that his car was repossessed and that he did some free-lance writing and other odd jobs to obtain money, that as a result of the non-payment of child support he lost his license, *Id* at 52-59, Vol 1.

In regards to parenting time, Pierre testified that when he had employment and a vehicle, it was easy to exercise parenting time three days per week consistent with the terms contained in the Judgment of Divorce, *Id* at 61, Vol 1, line 18-24. He admitted that once his car was repossessed, it was no longer possible to visit 3 times per week consistent with the term contained in the Judgment of Divorce, *Id* at 62, Vol 1, line 1-2. Moreover, he

explained that even when he had access to a vehicle, he did not have money for gas, *Id* at 66, Vol 1, line 16-19. He testified, in response to the trial judge questions that before he lost his license and job, and before his car was repossessed, he did regularly exercise parenting time with his son, *Id* at 76, Vol 1, line 16-24.

Pierre testified that in 2010, he only saw AJR twice, *Id* at 64, Vol 1, line 6-10. However he sent AJR emails on a monthly basis, *Id* at 64, Vol 1, line 13-19.

A collection of some of the emails that Pierre sent to AJR was admitted as Exhibit 3, *Id* at 5, Vol 2. On June 20, 2011, Pierre sent AJR an email wherein he told his son: "Hi big guy. I've missed you so much", *Id* at 9-10, Vol 2, line 25, line 1. On August 10, 2011, he also sent his son another email wherein he told him "I'm sorry I haven't been able to see you", *Id* at 11, Vol 2, line 11-15. Pierre sent a similar email on September 8, 2011 and September 20, 2011, *Id* at 11, Vol 2, line 17-20 and at 20, Vol 2, line 18-20. Mr. Roustan explained that AJR viewed him as an authority figure in his life, *Id* at 35, Vol 2, line 16-20, that he had a good relationship with his son, *Id* at 36, Vol 2, line 5-9 and his angst about his son knowing about the adoption and the confusion it was causing him, *Id* at 36, Vol 2, line 10-22.

Pierre testified that although he worried that the gaps in his parenting time would cause AJR some hesitation, his concerns were absolutely

unfounded. Instead, AJR was always very receptive to the visits, *Id* at 38, Vol 2, line 5-10. Mr. Roustan testified that he did not believe the stepparent adoption was consistent with his son's best interest, *Id* at 76, Vol 2, line 10-15. As such, he was against the adoption.

Not only did Pierre send emails, on October 8, 2011, he also sent his son a voice recording wherein he read a book to his son, *Id* at 12, Vol 2, line 1-4. On November 25, 2011, Pierre voice recorded a poem he wrote for his son and attached a family picture to the email, *Id* at 13, Vol 2, line 21-24.

In regards to actual visits, in January 2011, Pierre requested a visit with his son wherein he would take him to Chuck E. Cheese's. However, Mrs. Merrill responded that she did not approve of same, *Id* at 14, Vol 2, line 19-24. However, Pierre did remember a visit in January 2011 nonetheless, *Id* at 15, Vol 2, line 18-21.

Pierre next requested a visit in May 2011. Pierre did recall seeing his son for 3 hours on May 11, 2011 for AJR's birthday, *Id* at 17, Vol 2, line 13-17. He again requested a visit on May 18, 2011. However, this visit did not work out because Mrs. Merrill would only allow Pierre to take his son for two hours, *Id* at 18, Vol 2, line 16-19.

Mrs. Roustan was the last witness called to testify. She testified that she was present for most of the visits Pierre had with his son, *Id* at 85, Vol



2, line 2-5. She testified that Pierre's visits with AJR had gone very well. *Id* at 85, Vol 2, line 6-7. She testified that AJR is excited to see his father, *Id* at 85, Vol 2, line 7-8.

There are more details like the above listed in the Statement of Facts found in "Respondent-Appellee's Brief in Response to Application for Leave to Appeal" **Attachment "A"**, at 1-13, adopted in this brief.

Suffice it to say that AJR views Pierre as an authority figure in his life, contrary to Mrs. Merrill's testimony otherwise, *Id* at 32, Vol 2, line 16-20, that he had a good relationship with his son, *Id* at 36, Vol 2, line 5-9, and that AJR was always very receptive to the visits, *Id* at 38, Vol 2, line 5-10. ***Pierre was a part of his son's life since he was born, Attachment "B"***, at 41, Vol 2, line 8-9. (emphasis ours). He explained that AJR, has a right to know his father and "how hard he's worked to try and get back . . . the ability to see him as much as possible. . . ." *Id* at 76, Vol 2, line 10-15.

The above testimony bears evidence of the emotional attachment between AJR and his father. The love, comfort and emotional support Pierre provided AJR through the early formative years during the marriage.

**What happens to a child who is attached to "Daddy Pierre" as a part of his life since he was born?** A father he loves and has fun together? A father he looks as an authority figure, who never abused him or

mistreated him? A father who excites him when he is present, and upsets him when he is late for the visits? *Id* at 37, Vol 1, line 12-14. Is he perhaps fearful of losing him, and unable to express his feelings, exhibits **"panic attacks"** after the visits during the adoption period? *Id* 33, Vol 1, line 13-18, foreseeing days of sadness without his father? In spite of the importance of this evidence, it was not considered by the court. The trial court terminated Pierre's parental rights without considering the adverse effect that said termination would have on AJR, without the protection of a guardian ad litem, without the benefit of a psychological evaluation and without eliciting AJR's desires or at least listening to his voice.

AJR is a victim whose constitutional rights are violated even to this day. The bare violation of his constitutional rights is sufficient basis for this court jurisdiction as much as the violation of the constitutional rights of Pierre, because it is independent of any custodial rights, but depends on the love and attachment to his father and the injury to his rights.

AJR is like a bouncing football after a punt that both parties strive to acquire but the receiver cannot touch, but worse, because a football is not treated with indifference by the referee and lack of concern by all involved, like the judge for the child and the petitioners for the father-child relationship. The violation of the natural and constitutional right of AJR alone is enough to find the Stepparent Adoption Statute unconstitutional under the

Fourteenth Amendment of the constitution of the United States and inconsistent with the general purposes of the Adoption Code.

- 4. The natural right of the child is an interest far more precious than any liberty or property right under the XIV Amendment of the Constitution and is independent of the custody rights of the parent as his right is derived from the *inalienable* natural bond of attachment between the child and his or her parent which is older than any recognized civil right and any constitution**

The rights of minor children and parents are protected by the Due Process Clause of the Fourteenth Amendment. *Stanley v Kramer*, 455 US 745, 752-54 & n7; 102 S Ct 1388; 71 L Ed 2d 599 (1982). "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v Eldridge*, 424 US 319, 332; 96 S Ct 893; 47 L Ed 2d 18 (1976). This applies to the nature of the government function in the Stepparent Adoption Statute and the private interest affected by the governmental action. *Stanley v Illinois*, 405 US 645, 650-51; 92 S Ct 1208; 31 L Ed 2d 551 (1972).

There is no question that the interest of a child is of paramount importance and aligned with the interest of a fit parent under the law. See *Id.* at 652. *Lassiter v Dep't of Social Servs*, 452 US 18, 28; 101 S Ct 2153; 68 L Ed 2d 640 (1981); *In re Irwin*, No 229012, 2001 WL 793883, at \*5 (Mich App, July 13, 2001). *Troxel v Granville*, 530 US 57, 65 (O'Connor, J)

(plurality opinion) (quoting *Washington v Glucksberg*, 521 US 702, 720; 117 S Ct 2258; 138 K Ed 2d 772 (1997)), 120 S Ct 2054; 147 L Ed 2d 49 (2000) (internal quotation marks omitted).

Importantly, the Constitution protects not only the right to custody of the child and the constitutional parent's right to be a parent but it promotes the best interests of the child and the separate constitutional right of the child to his biological parent, particularly especially where emotional attachment has occurred. Thus, our constitutional system long ago rejected any notion that a child is "the mere creature of the State." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) but more important, historically, it has recognized that natural bonds of affection lead parents to act in the best interest of their children. 1 W. Blackstone, *Commentaries* \*447; 2 J. Kent, *Commentaries on American Law*\* 190; we add that said bonds of affection are at the heart of children's healthy development and attachment to the parent as we argue above and too fundamental to be suppressed on the mere basis of speed and efficiency to facilitate stepparent adoptions without first evaluating the need for such adoptions and the need for reunification.

Although the Supreme Court has recognized that children are persons within the meaning of the Fourteenth Amendment it has accorded them some, but not all, of the individual rights enjoyed by adults. See, e.g., *Planned Parenthood of Cent. Mo. v Danforth*, 428 U.S. 52, 74 (1976) ("Minors, as well as adults, are protected by the Constitution and possess

constitutional rights."); *Tinker v Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503(1969) (protecting a student's right to engage in silent and passive protest on school property); *In re Gault*, 387 U.S. 1 (1967) (holding that juvenile adjudication proceedings, where a commitment to a State institution is a possibility, must meet "due process" standards). These cases have generally failed to articulate any coherent theory of children's due process rights, particularly where children's interests conflict with the interests of their caretakers. See Catherine J. Ross, *An Emerging Right for Mature Minors to Receive Information*, 2 U. Pa. J. Const. L. 172-82 (1999).

Particularly in the substantive due process context, the Court has tended to equate children's interests with those of their parents and to protect children derivatively through such doctrines as parental autonomy and familial privacy. See, e.g., *Wisconsin v Yoder*, 406 U.S. 205 (1972) (allowing Amish parents to withdraw children from school after eighth grade); *Pierce v Society of Sisters*, 268 U.S. 510, 534-35 (1925) (protecting, in dicta, parents' rights to educate their children); *Meyer v Nebraska*, 262 U.S. 390, 399 (1923) (reversing conviction of teacher who had instructed child in foreign language in violation of Nebraska statute, under reasoning that Fourteenth Amendment protects teacher's liberty); see also Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 Fordham L. Rev. 1571, 1586 (1996) (critiquing cases).

Locating a parental right to raise children in the liberty clause of the Fourteenth Amendment only makes sense if children are viewed as the property of their parents. See Barbara Bennett Woodhouse, "*Who Owns the Child?*": *Meyer and Pierce and the Child as Property*, 33 Wm. & Mary L. Rev. 995. 1041-42 (1992).

Moreover, the Court's insistence on protecting children derivatively through such doctrines as parental privacy ignores the interests of those children whose parents lack the economic means to provide protection, while prevailing notions of constitutional entitlements do little to guarantee parents such means. Perhaps more troubling, by limiting the State's authority to intervene in family life, conceptions of parental privacy and autonomy endanger children whose parents lack the will to protect them. See *DeShaney v Winnebago County Dept't of Soc. Servs.*, 489 U.S. 189, 203 (1989) (holding that state officials did not breach a constitutional duty when they knowingly failed to protect a four-year old boy from a brutal beating at the hands of his biological father, and noting that, had state authorities moved too quickly to intervene "they would likely have been met with charges of improperly intruding into the parent-child relationship, charges based on the same Due Process Clause that forms the basis for the present charge of failure to provide adequate protection"). This is not to suggest that the State has not historically intervened in children's lives, particularly the

lives of poor children, but *DeShany* reaffirms that the State is under no constitutional obligation to do so.

The idea that society can best promote children's interests by reinforcing parental authority and preventing undue state interference with parental child-rearing decisions retains power as a jurisprudential construct and as a check against state-imposed interference even though it is an imperfect way of protection. See Martha Albertson Fineman, *What Place for Family Privacy?* 67 Geo. Wash. L. Rev. (1999); Barbara Bennett Woodhouse, *The Dark Side of Family Privacy*, 67 Geo. Wash. L. Rev. (1999); see also Ira C. Lupu, *The Separation of Powers and the Protection of Children*, 61 U. Chi. L. rev. 1317 (1994).

Today, marriage and parenthood are no longer as closely tied, intra-family conflicts are not suppressed, and there is no elaborate network of legal and social incentives and sanctions forcing most women to devote the bulk of their time and energy to caring for children. Today, these background legal and societal assumptions no longer hold true. For an argument that these background assumptions have simply changed forms, see Reva Segel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-enforcing State Action*, 49 Stan. L. Rev. 111 (1997).

The law now recognizes that parenting takes place in a broad variety of familial settings. More importantly, the law now views adult family members as autonomous individuals whose separate preferences and

decisions demand social respect and legal protection. Parents are no longer partners for life, if, indeed, they become partners at all. See June Carbone, *From Parents to Partners* (1999). Women are no longer forced to choose motherhood as their only, or, indeed, their primary, career. Indeed, most women are arguably economically precluded from choosing to work exclusively in the home. See generally Ellen Galinsky, *Ask The Children: What America's Children Really Think About Working Parents* (1999) (exploring children's and parents' views of working families). Yet neither fathers nor society have responded to women's changing investment in parenting by significantly increasing their role in caring for children. As Janet Dolgin recently observed, "Children – and, even more, childhood – continue to be understood in traditional terms, but the legal and familial structures within which those terms once made sense have largely disappeared. Janet Dolgin, *The Fate of Childhood: Legal Models of Children and the Parent-Child Relationship*. 61 Alb. L. Rev. 345, 348 (1997).

The demise of these traditional legal and familial structures *lead us to advocate enhanced constitutional rights on behalf of children*, even if constitutional rights, as conventionally understood, are ill-suited to address the needs of children because they fail to address the reality of children's lives, particularly their dependence on adult caretakers. Children require ongoing, intimate, hierarchical relationships. *We propose herein the principles of a coherent theory of children's due process rights, by means of*



*a doctrine and a process emphasizing the formation and maintenance of the dependency relationships of the parent-child relationship rather than terminating it, and an emphasis in protecting children from the vulnerability created when the marriage relationships go awry, i.e., in divorce situations and split custody arrangements of which the children are in no way responsible, even if they blame themselves and ought not to be punished for the failures and fallibilities of their natural parents. Unfortunately the conventional means for providing these protections is the use of "rights." Yet "rights" remain an imperfect method for describing the realities of children's lives and for recognizing and protecting their interests, See generally Martha Minow, *Rights of the Next Generation: A Feminists Approach to Children's Rights*, 9 Harv. Women's L. J. 1 (1986) (arguing that other social goals such as crime reductions and abortion regulation, rather than the well-being of children, are the dominant objectives of child welfare laws); Barbara Bennett Woodhouse, *Children's Rights, The Destruction and Promise of Family*. 1993 BYU L. Rev. 497 (1993) (advocating a new approach based on a community ethos that values children as individual members of society and not just as an extension of their parents). As Catherine Ross points out, the usefulness of rights may also depend on the child's age. See Ross, *supra* note 1, at 178-201.*

Is a family bond that does not take custodial form insufficiently substantial to deserve protection and worth preserving?

Is a biological father who, for example, has never had custody of his child, no matter how secure the bond of attachment is and the parent-child relationship, and a child who has a bond with his parent, excluded from substantive protection?

Should any party seeking to effect a stepparent adoption, or termination of parental rights to a stepchild, satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the parent-child relationship and demonstrate that these efforts have proved unsuccessful? Shouldn't attempts be made to cure family deficiencies before the drastic measures of stepparent adoption or termination of parental rights be taken, or the unnecessary discontinuance of the parent-child relationship occurs?

These protections are consistent with the principle, recognized in our cases, that **the biological bond between parent and child** is meaningful. "[A] natural parent's desire for and right to the companionship, care, custody, and management of his or her children," **"is an interest far more precious than any property right."** See *Santosky*, 455 U.S. 745-759 (1982) (emphasis ours). Although the Constitution does not compel the protection of a biological father's parent-child relationship until he has taken steps to cultivate it, this Court has nevertheless recognized that "the biological connection. . . offers the natural father an opportunity that no

other male possesses to develop a relationship with his offspring.” *Lehr v. Robertson*, 463 U.S. 248, 262 (1983).

We question the assumption that termination of parental rights serves the interests of biological parents, adoptive parents, and adoptees. While we would preserve the biological parent’s option to consent to the adoption and terminate his parental rights, we believe that this choice should not prevent the parent-child bond of attachment and parent-child relationship to continue, if it exists, and should not prevent the child from benefiting from the child-parent relationship and emotional bond if it is determined to be in the best interest of the child, even if the presumption of fitness is rebutted and the termination of parental rights is deemed necessary; the above is obviously true in situations where the biological parent does not consent to the termination of his parental rights and objects to the adoption as not being in the best interest of the child. In such cases where the presumption of fitness is not rebutted or challenged, and unfitness is not proven by petitioners, the right of the child and his best interest is paramount and of necessity the parent-child relationship must continue and be nurtured. There is no reason why this procedure should affect the integrity of a bona fide adoptive family, if adoption is deemed absolutely necessary and needed by the child, without destroying the privileges of the child and the biological parent and the parent-child relationship for their benefit and emotional attachment. In short, parental right and parent-child relationship that

usually go together need not necessarily go together. They can be separate and independent from each other. The parent-child relationship may exist in the absence of parental rights even in the case of the termination of the parent's parental rights. If such parent-child relationship is deemed important, necessary and needed for the welfare of the child and so determined by the trial court after a proper investigation and hearing by the court, it should and ought to be continued. The natural father or mother as the case may be should be allowed to contact, visit, and see his or her child, so long as the parent-child relationship is beneficial to the child, even if the parental rights have been terminated. *The termination of the parent's parental rights does not terminate the child's rights under the constitution* and should not terminate the parent-child relationship without regard to the child's right and welfare. There is a need to have an independent and separate evaluation and determination by the trial judge, in each and every case, whether the separate and independent rights of the child should be terminated and whether the parent-child relationship should continue and be nurtured, all within the scope of the best interest of the child.

We believe that a parent's parental rights may be terminated only upon a showing by clear, cogent and convincing evidence that he is an unfit parent, that the termination is in the best interest of the child and that the parent is withholding his consent to adoption contrary to the child's best interest, in situations where there is no parent-child bond of attachment,

after eliciting the preferences of the child and the possible harm to the child caused by the termination, showing that the father has failed to perform parental duties with a total disregard for his parental obligations, over and beyond financial and transportation problems. Furthermore, based on the presumption of fitness, the prospective adoptive couple should go through the process of an evidentiary hearing and make reasonable efforts to preserve and reunify the biological parent and the child and preserve the parent-child relationship, requiring them to satisfy the court that active efforts have been made to provide appropriate remedial services. These procedures recognize that biological fathers have a valid interest in a relationship with their child, and children have a reciprocal interest in maintaining the parent-child relationship. See *Santosky*, 455 U.S. at 760-761, n. 11 (1982) (describing the foreclosure of a newborn child's opportunity to "ever know his natural parents" as a "los[s] [that] cannot be measured"). These rules also reflect the understanding that the biological bond between a parent and a child is a strong foundation on which a stable and caring relationship may be built.

We believe that no court should order the termination of parental rights or the termination of parental status over and beyond custody without a finding of unfitness, or the termination of a parent-child relationship in the absence of a determination, supported by evidence beyond a reasonable doubt (in Michigan by "clear and convincing evidence"), including testimony

of qualified expert witnesses and the preference of the child, that the continued parent-child relationship is likely to result in serious emotional or physical damage to the child.

## **5. The silenced voice of the child**

*Amicus curiae* believes that each child has a constitutional right to be heard and inform the court of his or her preferences directly by his testimony, to the extent that he or she is capable to express his or her position, his or her desire to testify, the repercussions of testifying, the necessity of his direct testimony, the availability of other evidence and his or her developmental ability to provide direct testimony and withstand possible cross-examination, or in the absence of one or more of those considerations through in chamber conferences with the court, or through a properly qualified lawyer *Guardian ad Litem*, and reports and evaluations of qualified psychologists and other professionals.

With regard to a minor child's view on the parent-child relationship,

*Amicus Curiae* believes that the following standards should be applied:

The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation, except as specifically provided herein. Client directed representation does not include "robotic allegiance" to each directive of the client. . . . To the extent that a child cannot meaningfully participate in the formulation of the client's position (either because the child is preverbal, very young or for some other reason is

incapable of judgment and meaningful communication), the attorney shall substitute his/her judgment for the child's and formulate and present a position which serves the child's interest. . . . It is possible for the child client to develop from a child incapable of meaningful participation in the litigation . . . to a child capable of such participation during the course of the attorney client relationship. Marvin Ventrell, *Legal Representation of Children in Dependency Court: Toward a Better Model – the ABA (NACC Revised) Standards of Practice*, NACC Children's Law Manual Series (1999) at 184-87.

Except for the hearsay instances cited above that AJR referred to Pierre as "**Daddy Pierre**" (emphasis ours), **Attachment "B"**, at 17, Vol 1, line 1-3, *Id* at 85, Vol 2, line 21, the admission by Mrs. Merrill that AJR loves Pierre and has fun with his dad, *Id* at 17, Vol 1, line 6-7, the testimony of Mrs. Roustan that Pierre's visits with AJR had gone very well and that AJR is excited to see his father, *Id* at 85, Vol 2, line 6-7, and the testimony of Pierre that AJR views him as an authority figure in his life, *Id* at 32, Vol 2, line 16-20, that he had a good relationship with his son, *Id* at 36, Vol 2, line 5-9, that AJR was always very receptive to the visits, *Id* at 38, Vol 2, line 5-10, that he was a part of his son's life since he was born, *Id* at 41, Vol 2, line 8-9, that AJR was confused knowing about the adoption proceedings, *Id* at 36, Vol 2, line 10-22, the voice of AJR was never allowed to be heard at this trial through direct testimony or indirectly through a *Guardian ad Litem*, in chamber conference with the trial judge, or through evaluations of social agencies or professional psychologists.

Note that Michigan law requires that a court consider the views of a child under the Juvenile Code, MCL 712A.1 *et. seq.*, in cases dealing with

permanency plans. MCL 712A.19a(3) requires that the trial court “obtain the child’s views regarding the permanency plan in a manner that is appropriate to the child’s age”, and requires that this inquiry will take place **prior** to a termination proceeding, so that the views of the child can inform the entire process underscoring the importance of the statutory right of the child.

Similarly, MCL 712a.17(D)(1) requires that the Lawyer-Guardian *ad Litem* report the “child’s wishes and preferences” to the court as part of the Lawyer-Guardian *ad Litem*’s duty in determining the best interests of the child. Moreover, it has long been recognized in the Child Custody Act that an analysis of the best interests of the child must include the child’s views to the extent those views can be ascertained. MCL 722.23(i).

AJR had the right not to be subjected to the arbitrary deprivation of a procedural protection provided under the law. The trial’s court omission violated Due Process. *MLB v SLJ*, 519 US 102, 126-27; 117 S Ct 555; 135 L Ed 473 (1996). “[t]he touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard in a meaningful manner,” *O’Donnell v Brown*, 335 F Supp 2d 787, 809 (WD Mich, 2004), and this is precisely the same right of a child to be heard in a meaningful manner on decisions affecting that child’s life.

*Amicus curiae* believes that the trial court must, in some way, shape or form, be able to ascertain the views of the child as best it can, before



making a decision affecting the fundamental constitutional right of the child to the care, love and affection of his biological parent. AJR deserved in July 19, 2012 and still deserves to this day to have his voice heard loud and clear before the trial court decides whether to terminate his relationship with his father.

In summary: (1) the interest of the children are of paramount importance; (2) the interest of the children are best protected by procedural safeguards for the reunification of the parent and the child with proper investigation and appointment of a guardian *ad litem* for the child; (3) the determination of fitness of the parent is indispensable if such determination is necessary and warranted by the facts; (4) the desires of the child need to be determined by the court, if at all possible, by giving a voice to the child; (5) speed, efficiency and convenience alone cannot justify a government termination of the parental rights of a parent without a determination of fitness, a determination of the effect that such a determination will have on the emotional health of the child, and without efforts at reunification; (6) the mere convenience of having a stepparent adoption without any regard to the constitutional rights of the biological parent and the constitutional rights of the child is not enough to overcome such rights without first determining whether the *procedures* used to achieve the general purpose of the Adoption Code are constitutionally defensible. A government cannot presume that a parent is unfit and overcome the presumption of fitness but must adjudicate

a parent's fitness **before** taking jurisdiction and imposing burdensome requirements for custody consistent with the general purposes of the Adoption code. In this case, the trial court failed in all counts but failed most grievously in terminating the parental right of the father without a finding of unfitness and without considering the paramount importance of the father for the child. This court should seize this opportunity to declare the Stepparent Adoption Statute unconstitutional and put the process of stepparent adoption in Michigan on a firm constitutional basis consistent with the general purposes of the Adoption code.

#### **IV. CONCLUSION AND REMEDY**

*Amicus Curiae* proposes as a remedy that even when the biological parent consents to the adoption and termination of parental rights, this choice should not prevent the parent-child bond of attachment and parent-child relationship to continue, if it exists, and should not prevent the child from benefiting from the child-parent relationship and emotional bond if it is determined to be in the best interest of the child. *We note that in the real world, adoptive parents recognize the attachment bond and the parent-child relationship by entering into agreements to allow the consenting parent to visit his child after the adoption is finalized, an agreement that almost inevitable is broken, while the judge asks him whether promises have been*

*made to induce him to consent and admonishes him that said agreements are unenforceable under the law in a remarkable example of dissimulation.*

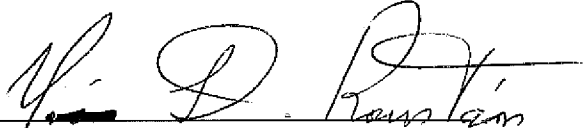
We conclude that **the natural right of the child and his best interest is paramount and an interest far more precious than any liberty or property right and for that reason the parent-child relationship should continue and be nurtured, if at all possible.**

AJR and Pierre Dominique Roustan were stripped of mankind's most fundamental, natural and constitutional right, a right 'older' than the Bill of Rights, by procedures that minimize the inquiry into the question of fitness of the noncustodial parent, without safeguards for reunification between the parent and the child, without legal representation for the child, without determining the preferences of the child, for the sake of political convenience and the elitist interest of progressive ideologies, in violation of the general purposes of the Adoption code and the inalienable rights incorporated in the XIV Amendment of the Constitution of the United States.

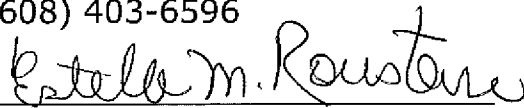
For these reasons, and its impact on the whole of society, *Amicus Curiae*, Yvon D. Roustan and Estela M. Roustan, parents of Pierre Dominique Roustan and grandparents of AJR request the Court to hold the "Stepparent Adoption Statute" unconstitutional under the Fourteenth Amendment of the Constitution of the United States and inconsistent with the general purpose of the Michigan Adoption Code, affirm the Appellate Court's order in this

matter, protect the constitutional rights of AJR to the care, love and affection of his father, order the reinstatement of the parental, custodial and visitation rights due AJR through his father, and the rights of Pierre Dominique Roustan, father of AJR, together with the rights of any parent and child similarly situated.

Respectfully submitted,

/s/ 

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**IN THE MICHIGAN SUPREME COURT**

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In the Matter of AJR, Minor

Circuit Court No.: 12-24817-AY  
Court of Appeals No.: 312100  
Supreme Court No.: 147522

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**Attachments to Respondents-Appellee' Motion for Leave to File Brief  
*Amicus Curiae***

**A. "Respondent-Appellee's Response to Application for Leave to Appeal"**

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# **ATTACHMENT "A"**

**APPELLEE'S OBJECTIONS TO THE GROUND FOR APPELLANT'S  
APPLICATION FOR LEAVE TO APPEAL**

Respondent-Appellee, Pierre Roustan, denies that the sole ground set out in MCR 7.302(B) offered by Petitioners-Appellants presents an issue that this Court is interested in, as asserted by them, and that the factual posture of the case makes it an inappropriate vehicle for addressing such issues.

In particular, Petitioners-Appellants fail to connect to the issue in the case the ground listed in MCR 7.302(B)(3) that: "the issue involves legal principles of major significance to the state's jurisprudence;"

The Court of Appeals decision gave effect to the *statutory intent* of the Legislature as enunciated in MCL 710.21a(b): "to provide procedures and services that safeguard and promote the best interest of each adoptee in need of adoption and that will protect the rights of all parties concerned."

When viewed from the point of view of the father, the termination of parental rights forever severs all relations between parent and child, depriving the parent of the care, custody and control of his child, mankind's most fundamental, natural and constitutional right. This fundamental right is 'older' than the Bill of Rights, *Smith v Organization of Foster Families*, 431 US 816 at 845, and an element of the "liberty' guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States, *In re LaFlure*, 48 Mich App 377, 385, 210 NW2d 482, *lv.den.* 380 Mich 814 (1973). The Stepparent Adoption Act provides a bare minimum inquiry into the question of fitness

of the noncustodial parent, without procedural safeguards for reunification between the parent and the child, which is within the scope of the purpose of the statute: "to safeguard and promote the best interest of each adoptee in need of adoption and that will protect the **rights of all parties** concerned."

*Id.* (emphasis ours).

When viewed from the point of view of the child, the parent whose parental rights have been terminated no longer exists. The situation is as if the parent had died depriving the child, within the context of the stepparent adoption, of a fundamental, natural and constitutional right to the care, love and affection of his biological parent, which is in violation of the Constitution with a minimum beginning inquiry into the question of the best interest of the child and without adequate procedural safeguards for the need of the child and reunification within the scope of the purpose of the statute: "to safeguard and promote **the best interest** of each adoptee in **need** of adoption and that will protect the rights of all parties concerned." *Id.* (emphasis ours)

Is it any wonder then that when a right of such a fundamental and important nature is weakened, the Legislature restricts the termination of the rights of the noncustodial parent during a stepparent adoption, to situations where the parent does not have legal custody?

Indeed, would it not be improper to construe a statute in a manner the Legislature did not intend based merely on a party's misleading representations in the Appellants' Application as we discussed in detail in the argument below? Petitioners-Appellant failed to demonstrate that the Court of Appeals was clearly erroneous and will cause material injustice under MCR 7.302(b)(5)



## **STATEMENT OF FACTS AND PROCEEDINGS**

This is an appeal from an April 18, 2013 published decision of the Court of Appeals (300 Mich App 597, \_\_\_\_NW2d \_\_\_\_), and the court of Appeals order denying reconsideration dated July 8, 2013 that reversed the trial court Opinion and Order dated August 9, 2012 that terminated Respondent-Appellee, Pierre Roustan's rights to his biological child pursuant to a Petition for Step-Parent adoption that was filed by Steven Merrill, the minor child's step-father.

### **Summary of Background Facts**

Appellant, Pierre Roustan [hereinafter Mr. Roustan] and Appellee Ms. Susan Merrill [hereinafter Ms. Merrill] were married on October 11, 2003. Appendix A at pg. 1. There was one minor child born during their union, Aidan Jay Roustan, born May 9, 2005. *Id.* The parties were divorced on February 24, 2009. *Id.* The Judgment of Divorce awarded the parties joint legal custody, but Ms. Merrill was awarded sole physical custody. *Id.* Mr. Roustan was awarded reasonable visitation and was ordered to pay child support. *Id.* Initially, Mr. Roustan was ordered to pay \$700.00 per month in child support. But, on August 7, 2009, Mr. Roustan's support obligation was lowered to \$395.00 per month. *Id.* Ms. Merrill married Appellee Mr. Steven Merrill [hereinafter Mr. Merrill] on June 25, 2010.

### **Step-Parent Adoption Petition**

On May 9, 2012, Mr. Merrill filed a Petition for Step-Parent Adoption. [hereinafter Referred to as Petition]. In the Petition, Mr. Merrill alleged that "the non-custodial parent has failed to provide support or comply with a support order and failed to visit or contact the adoptee for a period of 2 years or more." *Id.* As such, Mr. Merrill requested that the trial court enter an order terminating all existing rights of Mr. Roustan, allowing the child to be placed with him, and changing the minor child's name to Aidan Jay Merrill. *Id.*

On the same date, Ms. Merrill filed a Supplemental Petition and Affidavit to Terminate Parental Rights of Non-Custodial Parent. In her Petition, she likewise alleged that Mr. Roustan "has failed to substantially comply with the [support] order for a period of two years or more before the petition for adoption was filed.". She likewise contended that Mr. Roustan had the ability to visit, contact, and communicate with the child, but has regularly and substantially failed or neglected to do so for a period of two years or more before the petition was filed. Notably, in her Petition, Ms.

Merrill averred that she had "legal custody of the child." (emphasis added)

### **Evidentiary Hearing**

On July 18, 2012, the court commenced an evidentiary hearing on the adoption petition. Ms. Merrill was the first witness called to testify. Ms. Merrill admitted that she received child support from Mr. Roustan over the last two years through the Friend of the Court. (July 19, 2012

transcript at pg. 6, line 12-17) However, she could not specifically recall the time of the payments. *Id.* at pg. 6, line 19-25. But, she denied that she received regular support. *Id.* at pg. 7, line 1-2.

In regard to visitation, Ms. Merrill admitted that Mr. Roustan visited the minor child on May 10, 2010 for the minor child's birthday. *Id.* at pg. 7, line 6-9. Ms. Merrill did not provide any other testimony regarding visits in 2010. However, she did admit that Mr. Roustan had parenting time on January 15, 2011, and May 11, 2011. *Id.* at pg. 7, line 11-23. Ms. Merrill admitted that Mr. Roustan likewise requested parenting time on June 4, 2011. However, she averred that he declined to visit after learning that he would only be permitted to see Aidan for 2 hours. *Id.*

Ms. Merrill likewise admitted that Mr. Roustan exercised parenting time on Father's Day 2011 (June 19, 2011). *Id.* at pg. 7, line 24-25. Thereafter, he exercised parenting time on July 3, 2011. *Id.* at pg. 8, line 1-3.

Ms. Merrill stated that Mr. Roustan had requested parenting time on November 25, 2011. However, he cancelled the visitation on the evening of Thanksgiving, explaining he had car trouble. *Id.* at pg. 8, line 9-15. Ms. Merrill averred that Mr. Roustan only had one visit in 2012: April 20, 2012. *Id.* at pg. 8, line 17-20. However, she admitted that Mr. Roustan requested visits on April 25, April 27, May 2 and May 4, 2012, but that he subsequently cancelled. *Id.* at pg. 8, line 19-25. Ms. Merrill stated that Mr. Roustan explained that the reason he did not visit is because

he had no money and no car. *Id.* at pg. 19, line 1-2

Ms. Merrill did not assist in transporting the minor child for parenting time with Mr. Roustan despite the fact the he faced financial difficulties and had no transportation. *Id.* at pg. 19, line 9-13. Ms. Merrill also admitted that there was no bus service available between her home in Lowell and Mr. Roustan's home in Grand Rapids, *Id.* at pg. 19, line 13-16.

In regard to phone calls, Ms. Merrill admitted that Mr. Roustan called the minor child on his birthday in 2012. However, he was not able to talk to the child. *Id.* at pg. 9, line 1-4. Moreover, Ms. Merrill admitted that she did not have the child call his father back. *Id.* at pg. 37, line 17-18. Beyond that, Ms. Merrill denied that Mr. Roustan made any other attempts at telephone calls or conversations with the child. *Id.* at pg. 9, line 7-11.

On cross examination, Ms. Merrill explained that she did not know why Mr. Roustan did not receive notice of the filing of the adoption petition until June, over a month after it was filed. *Id.* at pg. 9, line 1-4. Ms. Merrill admitted that during that time, she filed a parenting time motion which was heard by the Friend of Court on June 13, 2012. *Id.* at pg. 12, line 1-4.

Ms. Merrill admitted that pursuant to the Judgment of Divorce, although Mr. Roustan was awarded parenting time, Monday, Tuesday and Friday from 3:00p.m. to 7:00p.m., he was first required to call her and gain permission for visitation. *Id.* at pg. 12, line 9-13. Ms. Merrill admitted that there were times when Mr. Roustan would email and request a visit, and

that she would say that the minor child "was busy". *Id.* at pg. 13, line 17-20.

Ms. Merrill stated that although Mr. Roustan would not frequently call, it was typical for him to contact her via email. *Id.* at pg. 14, line 9-10. Ms. Merrill also admitted that Mr. Roustan sent sporadic email to the minor child, but that she chose to not read them to Aidan. *Id.* at pg. 15, line 21-25. Ms. Merrill admitted that the minor child referred to Mr. Roustan as "Daddy Pierre" and that she told the minor child that "his dad loved him". *Id.* at pg. 16, line 19, pg. 17, line 1-2. Ms. Merrill also admitted that she did not inform Mr. Roustan of the minor child's extra-curricular activities. *Id.* at pg. 37, line 5-11.

Ms. Merrill likewise admitted that the minor child loves Mr. Roustan and that he has fun with his dad. *Id.* at pg. 17, line 3-7. Ms. Merrill admitted that Mr. Roustan had requested contact with Aidan via Skype, but that did not occur because she was having computer issues. *Id.* at pg. 18, line 21-24.

When Ms. Merrill was asked about visits the minor child has with Mr. Roustan after the adoption petition was filed, the court did not allow any testimony beyond the date when Mr. Roustan was served with the petition: June 14, 2012. *Id.* at pg. 21, line 20-25. Mr. Roustan's attorney objected to that restriction however, pointing out that the fact that Mr. Roustan has had ongoing visits with the child between May and July 2012 and was absolutely relevant to the child's best interests and the court's evaluation of same. *Id.*

at pg. 21, line 7-19.

In regard to visits in May and June 2012, Ms. Merrill testified that she could not recall specific dates, but that Mr. Roustan did "make more of an effort." *Id.* at pg. 12, line 9-13. She likewise admitted that she was not available for a May 23, 2012 visitation attempt by Mr. Roustan at the advice of her attorney. *Id.* at pg. 23, line 1-13. She also recalled that Mr. Roustan had a visit after May 24, 2012, but that she did not recall the date.

Ms. Merrill explained that she discussed the adoption with the minor child. However, she denied telling the minor child that if the adoption proceeded, that Aidan would never be able to see Mr. Roustan again. *Id.* at pg. 27, line 15-17.

Ms. Merrill averred that the minor child exhibited "panic attacks" after visits with his father and that because of these attacks, the minor child started seeing a therapist. *Id.* at pg. 33, line 13-18. However, Ms. Merrill denied having knowledge of any abuse of the minor child. *Id.* at pg. 33, line 22-24.

Ms. Merrill admitted that she last received child support from Mr. Roustan on July 2, 2012, but that he was in arrears approximately \$9,000.00. *Id.* at pg. 38, line 16-20. She admitted that recently, his payments were "regular." *Id.* at pg. 39, line 3-4. She testified that she received five or six support payments over the last two years. *Id.* at pg. 39, line 9-11. More specifically, after Exhibit 1 was admitted detailing he Friend of Court payment history, Ms. Merrill admitted that she received payments

totaling approximately \$4,500 from Mr. Roustan over the last two years.

*Id.* at pg. 42, line 15-17.

Mr. Merrill was also called to testify. Mr. Merrill testified about the minor child's extensive extra-curricular activities. He testified that Aidan had Cub Scouts on Tuesday evenings and soccer three evenings per week.

*Id.* at pg. 49, line 21-25. He admitted that Mr. Roustan had taken the minor child to soccer practice in the past. *Id.*

Mr. Roustan was the next witness to testify. He explained that he lived in Grand Rapids with his wife and her two children. *Id.* at pg. 52, line 12-19. He explained that in the summer of 2010, he lost his job due to health reasons. *Id.* at pg. 54, line 4-14. Around that same time, he explained that his car was repossessed. *Id.* at pg. 55, line 16. Between 2010 and February 2012, Mr. Roustan explained that he did some free-lance writing and other odd jobs to obtain money. *Id.* at pg. 56-57.

Mr. Roustan admitted that he had been subject to 3 show cause hearings during the last few years for non-payment of child support. *Id.* at pg. 39, line 3-4. Mr. Roustan stated that as a result of his failure to pay child support, he lost his license approximately a year and a half ago. *Id.* at pg. 59, line 11-14.

In regards to parenting time, Mr. Roustan testified that when he had employment and a vehicle, it was easy to exercise parenting time three days per week consistent with the terms contained in the Judgment of Divorce. *Id.* at pg. 61, line 18-24. He admitted that once his car was

repossessed, it was no longer possible to visit 3 times per week consistent with the terms contained in the Judgment of Divorce. *Id.* at pg. 62, line 1-2. Moreover, he explained that even when he had access to a vehicle, he did not have money for gas. *Id.* at pg. 66, line 16-19.

Mr. Roustan admitted that in 2010, he only saw the minor child twice. *Id.* at pg. 64, line 6-10. However, he testified that he called at least once and sent Aidan emails on a monthly basis. *Id.* at pg. 64, line 13-19.

A collection of some of the emails that Mr. Roustan sent to his son were admitted as Exhibit 3. (July 19, 2012 transcript at pg. 5) On June 20, 2011, Mr. Roustan sent his son an email wherein he told his son: "Hi big guy. I've missed you so much." *Id.* at pg. 9-10. On August 10, 2011, Mr. Roustan sent his son another email wherein he told him "I'm sorry I haven't been able to see you." *Id.* at pg. 10, line 11-15. Mr. Roustan sent a similar email on September 8, 2011 and September 20, 2011. *Id.* at pg. 11, line 17-20 and at pg. 20, line 18-20.

Not only did Mr. Roustan send emails, on October 8, 2011, he also sent his son a voice recording wherein he read a book to his son. *Id.* at pg. 12, line 1-4. On November 25, 2011, Mr. Roustan voice recorded a poem he wrote for his son and attached a family picture to the email. *Id.* at pg. 13, line 21-24.

In regards to actual visits, in January 2011, Mr. Roustan requested a visit with his son wherein he would take him to Chuck E. Cheese's. However, Ms. Merrill responded that she did not approve of same.



*Id.* at pg. 14, line 19-24. However, Mr. Roustan did remember a visit in January 2011 nonetheless. *Id.* at pg. 15, line 18-21.

Mr. Roustan next requested a visit in May 2011. Mr. Roustan did recall seeing his son for 3 hours on May 11, 2011 for Aidan's birthday. *Id.* at pg. 17, line 13-17. He again requested a visit on May 18, 2011. However, this visit did not work out because Ms. Merrill would only allow him to take his son for two hours. *Id.* at pg. 18, line 16-19.

On June 16, 2011, Mr. Roustan requested 7 hours of parenting time with his son for Father's Day, consistent with the parenting time outlined in the Judgment of Divorce. *Id.* at pg. 19, line 14-16. Mr. Roustan recalls that he did ultimately see his son on Father's day, despite Ms. Merrill's initial hesitation. *Id.* at pg. 20, line 1-5.

Mr. Roustan testified that he had planned on seeing his son for Thanksgiving. However, the visit had to be cancelled due to car trouble that left him and his wife stranded in Detroit for a week. *Id.* at pg. 21, line 9-13.

On December 26, 2011, Mr. Roustan sent another email to Ms. Merrill wherein he asked her to read a poem to Aidan. *Id.* at pg. 21, line 23-25. Mr. Roustan next emailed his son on April 2, 2012 wherein he apologized for not writing in a while. *Id.* at pg. 22, line 21-23.

Mr. Roustan recalls visiting with his son on both April 20, 2012 and April 25, 2012. *Id.* at pg. 23, line 15-16, pg. 30, line 2-6. During the April 25, 2012 visit, he brought his son presents and candy. *Id.* at pg. 23, line 15-16. After that visit, Mr. Roustan emailed Ms. Merrill and requested a

Saturday visit the next week. However, Ms. Merrill denied the request. *Id.*

at pg. 24, line 2-9. On May 7, 2012, Mr. Roustan requested parenting time on Thursday of that week instead. Ms. Merrill again declined to allow the parenting time. *Id.* at pg. 25 line 10-12.

On May 8, 2012, Mr. Roustan had emailed Ms. Merrill asking if she had yet made a decision on whether or not he could Skype with Aidan. This again was met with resistance by Ms. Merrill. *Id.* at pg. 28, line 12-14. On May 9, 2012, Mr. Roustan called Aidan but there was no answer and he received no return phone call. *Id.* at pg. 25, line 22-25. On that day, Mr. Roustan recalls leaving a lengthy voice mail message for his son, as verified by his phone records. *Id.* at pg. 27, line 11-17.

Mr. Roustan next recalls seeing his son on May 16, 2012 for approximately 3 hours. *Id.* at pg. 31, line 20-22. Mr. Roustan again requested to see his son on May 23, 2012. However, Ms. Merrill again refused to allow the visit. *Id.* at pg. 29, line 6-12. Mr. Roustan testified that he attempted to visit on both May 23, 2012 and May 25, 2012, but that Ms. Merrill was not home. *Id.* at pg. 39, line 3-4. However, Mr. Roustan did successfully visit his son on June 6, June 7, and June 13, 2012 from 4:30-7:00p.m. On June 8, 2012, after a new parenting time schedule was implemented by the court pursuant to Ms. Merrill's request, Mr Roustan testified that the schedule was followed with only minor deviations. *Id.* at pg. 77, line 18-21.

Mr. Roustan explained that Aidan did view him as an authority figure in his life, contrary to Ms. Merrill's testimony otherwise. *Id.*

at pg. 35, line 16-20. Mr. Roustan explained that he had a good relationship with his son. *Id.* at pg. 36, line 5-9. Mr. Roustan explained his angst about his son knowing about the adoption proceedings and the confusion it was causing him. *Id.* at pg. 36, line 10-22.

Mr. Roustan testified that although he worried that the gaps in his parenting time would cause Aidan some hesitation, his concerns were absolutely unfounded. Instead, Aidan was always very receptive to the visits. *Id.* at pg. 38, line 5-10.

Mr. Roustan testified that he did not believe the step-parent adoption was consistent with his son's best interests. *Id.* at pg. 41, line 16-18. He explained that he worked so hard to regain employment so that he could pay his child support and regularly see his son. *Id.* at pg. 41, line 8-15. He additionally explained that he was a part of his son's life since he was born. *Id.* at pg. 41, line 8-9. He explained that his minor child, has a right to know his father and "how hard he's worked to try and get back . . . the ability to see him as much as possible . . ." *Id.* at pg. 76, line 10-15. As such, he was against the adoption.

Mr. Roustan testified that although Mr. Merrill asked for his consent to the adoption on May 12, 2012, he did not received notice of the petition until the middle to end of June 2012. *Id.* at pg. 60, line 15-20. This was despite the fact that he was in court on June 8, 2012 in response to a motion to modify parenting time that was filed by Ms. Merrill. *Id.* at pg. 60, line 4-12.

The trial court also questioned Mr. Roustan. During the questioning, he explained that before he lost his license and job, and before his car was repossessed, he did regularly exercise parenting time with his son. *Id.* at pg. 76, line 18-24.

Ms. Roustan was the last witness called to testify. She explained that she has been married to Mr. Roustan for the last 2 years. As such, she was present for most of the visits Mr. Roustan had with his son. *Id.* at pg. 85, line 2-5. Ms. Roustan characterized Mr. Roustan's visits with his son as a very positive experience. She testified that Aidan is excited to see his father. *Id.* at pg. 85, line 15-16. Through Ms. Roustan's testimony, pictures were admitted that demonstrated the fun times Aidan had with his father. *Id.* at pg. 87, line 2-10. Pursuant to the court's direction, closing arguments were provided in writing.

#### **August 2, 2012 Opinion**

The trial court issued a written Opinion on August 9, 2012. (Appendix "A") In its Opinion, the court found that Mr. and Mrs. Merrill met their burden and proved by clear and convincing evidence that Mr. Roustan has both failed to substantially comply with the support order and regularly and substantially failed or neglected to visit, contact or communicate with Aidan. As such, the trial court terminated Mr. Roustan's rights to his minor child pursuant to MCL 710.51(6) and allowed the step-parent adoption to proceed. *Id.* at pg. 10.

### **Appeal to Court of Appeals**

Mr. Roustan filed a claim of appeal from the trial court's August 9, 2012 termination of parental rights Order on August 29, 2012. On April 18, 2013, the Court of Appeals issued a published Opinion in this matter (Appendix "B") wherein it reversed the trial court's order terminating the Respondent-Appellee's rights to his minor child and allowing the Petitioner-Appellant husband to adopt the minor child, AJR, *Id.* On or about May 8, 2013, Petitioners-Appellants retained new counsel and filed a Motion for Reconsideration of the Court's decision. In the Motion, Petitioners-Appellants incorrectly argue that legal custody, in the context of the Step-Parent adoption, means a "legal right to physical custody of a child". Petitioners-Appellants Assertion is wrong: legal custody and physical custody, as allocated between natural parents, have 2 distinct meanings in this State. Moreover, Petitioners-Appellants' arguments are actually policy arguments which must be made to the Legislature, not the Judiciary.

Therefore, like MCL 722.26C(1)(b) and MCL 722.1102, the guardianship statute, MCL 700.5204(2)(c), similarly recognizes that physical custody and legal custody are two distinct parental rights. While it is true that the statutes that Petitioners-Appellants cite stand for the proposition that legal custody of a child may be vested in a third party, it does not support the contention that as between parents, legal custody means a "a legal right to physical custody". Such a definition cannot be reconciled with the statutes that address the custodial rights of parents.

**THE ADOPTION STATUTE, THE CHILD CUSTODY ACT AND THE DIVORCE ACT ARE  
IN PARI MATERIA**

Petitioners-Appellants reason that the Adoption statute is not in *pari materia* with the Child Custody Act and the Divorce Act (No-Fault Divorce), two of the statutes that address the custodial rights of parents, arguing that legal custody means something different as between adoption, custody and divorce. This reasoning is reflected in the Statement of Questions Presented in Petitioners-Appellants' Application for leave to apply, Application at pg. 4 and 19, and in Petitioners-Appellees' Motion captioned "Appellees' Motion for Reconsideration." in the Court of Appeals, Motion to Reconsider at p 2.

Petitioners-Appellants interpret "Legal Custody" as ..."Physical Custody", suggesting that because the Legislature has not defined statutorily the meaning of "legal custody" that there is no distinct meaning between the plain meaning of the two legal terms in spite of all the case law and the legislative language to the contrary referred to above. Further, Petitioners-Appellants reason, without any supporting legislative language, principled analysis, or case law whatsoever that the Legislature "intended" that "Legal Custody is the same as the "legal right to physical custody of the child" in the adoption context.

We have shown above however that MCL 722.2 recognizes since at least 1968, well before the Step-Parent Adoption statute was enacted, the difference between legal and physical custody (control) of a minor child and that the general term "custody" of a child encompasses two distinct components: physical custody and control over a child (legal custody). We will therefore argue the issue on its merit without conceding that the unfounded issue raised by Petitioners-Appellants has any value or credibility whatsoever. Arguendo, because this Court may review the *novo* and may be inclined or disposed to review this case on the merits in lieu of granting leave to appeal, we address here, not only whether it is appropriate to grant leave to appeal but also whether the Adoption statute is or is not in *pari materia* with the above cited statutes.

Statutes in *pari materia* are those sharing a **common purpose** or those that relate to the same subject. *State Treasurer v Schuster*, 456 Mich 408, 417, 572 NW2d 628, (1998), *Crawford Co. v Secretary of State*, 160 Mich App 88, 95, 408 NW2d (1987), (emphasis ours). Statutes in *pari materia* are to be read and construed together as one law even if they were enacted at different times and without specific reference to each other. *Schuster, supra* at 417, 572 NW2d 628. "[T]hey must be construed to preserve the intent of each and, if possible, interpreted in such a way that neither denies the effectiveness of the other." *Crawford Co, supra* at 95, 408 NW2d 112. If statutory provisions can be construed in a manner that avoids conflict, then that construction should control the analysis. *People v Webb*, 458 Mich 265, 274, 580 NW2d 884 (1998), "The object of the in *pari materia* rule is to give effect to the legislative purpose as found in harmonious statutes." *Id.* (citation omitted).

In the case of *Sinicropi v Mazurek*, 273 Mich App 149, 729 NW2d 256, (Mich App, 2006), involving the Acknowledgment of Parentage Act, the

Paternity Act, and the Child Custody Act, MCL 722.21 et seq., along with consideration of the interaction or interrelationship between the acts the court held that the three acts must be read in *pari materia*, citing *Aichele v Hodge*, 259 Mich. App. 146, 161, 673 NW2d 452 (2003). The case involved issues regarding custody of a seven-year-old boy born to Holly Mazurek: paternity, an order of filiation, an acknowledgment of parentage and attempted revocation thereof, equitable parenthood, the constitutional rights of a biological father, standing, statutory construction, child support, and various other legal matters. Following a best-interests evidentiary hearing on custody, the trial court awarded **sole physical custody** of the child to Powers, awarded Powers and Mazurek **joint legal custody**, and awarded Mazurek parenting time. The trial court reserved ruling on parenting time for Sinicropi and on the issue of child support. In response to post judgment motions filed by Mazurek and Sinicropi, the trial court concluded that it should have conducted a best-interests analysis with respect to Sinicropi and custody, but the court otherwise rejected Mazurek's and Sinicropi's attack on the judgment. The trial court reviewed the child custody factors and in a separate opinion decided that it would not be in the child's best interests to award shared custody to Sinicropi. Subsequently, Mazurek and Sinicropi were both ordered to pay child support. All three parties appealed, presenting various arguments.

The case of *Brown v. Loveman*, 260 Mich App 576, 680 NW2d 432 (Mich. App., 2004) cites *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993), that states that "In discovering legislative purpose, statutes relating to the same subject or **sharing a common purpose** are in *pari materia* and must be read together.", (emphasis ours). Brown discusses MCL 722.27 and MCL 722.31 (the *D'Onofrio* factors) both relating to minor children and provide guidance concerning issues of



custody, parenting time, and change in legal residence. Both statutes share **the common purpose** of guiding the courts to an outcome that is in **the best interests of minor children**. (emphasis ours) The Child Custody Act of 1970, MCL 722.21 *et seq.*, governs child custody disputes between parents, that the purpose of the act is to promote **the best interest of children**, and it is to be liberally construed. (emphasis ours). MCL 722.26(1), *Frame v Nehls*, 452 Mich 171, 176, 550 NW2d 739 (1996); *Harvey v Harvey*, 257 Mich App 278, 291, 668 NW2d 187 (2003). MCL 722.27 focuses on **the best interests of the child**, and MCL 722.31(4) provides that the factors are to be analyzed "with **the child as the primary focus**." (emphasis ours). "In discovering legislative purpose, statutes relating to the same subject or sharing **a common purpose** are in *pari materia* and must be read together." *Ansell v Dep't of Commerce (On Remand)*, 222 Mich App 347, 355, 564 NW2d 519 (1997). (emphasis ours).

"Once the intention of the Legislature is discovered, it must prevail regardless of any conflicting rule of statutory construction." *Title Office, Inc v Van Buren Co Treasurer*, 249 Mich App 322, 326, 643 NW2d 244 (2002). In *Deschaine v St Germain*, 256 Mich App 665, 671 n 9, 671 NW2d 79 (2003), this Court, while noting MCL 722.31, indicated that the statutes appearing in the Child Custody Act of 1970 have the same purpose of promoting **the best interests of the children** and, thus, these statutes "may be interpreted consistent with each other, or in *pari materia*." (emphasis ours).

Even though we find no specific Michigan case holding that the Adoption Statute and the Child Custody Act and the Divorce Act (No-Fault Divorce), vis-à-vis "legal custody" are in *pari materia*, the **common purpose** in the determination of custody issues in Divorce cases is **the best interests of the child**. Some of the statutes in question give us **the common purpose**:

Pursuant to MCL 710.21a the Adoption Code provides the general purposes as follows:

(a) To provide that each adoptee in this state who needs adoption services receive those services.

(b) To provide procedures and services that will safeguard and promote **the best interests of each adoptee** in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, **the rights of the adoptee shall be paramount.** (emphasis ours)

(c) To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.

(d) To achieve permanency and stability for adoptees as quickly as possible.

(e) To support the permanency of a finalized adoption by allowing all interested parties in proceedings regarding the adoptee.

MCL 710.22 defines Adoptee as follows:

Sec. 22.

As used in this chapter:

(a) "Adoptee" means the individual who is to be adopted, regardless of whether the individual is a **child** or an adult. (emphasis ours)

Pursuant to MCL 722.23 of the Child Custody Act, defines **the best interest of the child** as follows:

Sec. 3.

As used in this act, "**best interests of the child**" means the sum total of the following factors to be considered, evaluated, and determined by the court: (emphasis ours)

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

See also *Frame v. Nehls*, 550 N.W.2d 739, 452 Mich. 171, 173 (Mich., 1996), the legislative purpose behind the Child Custody Act is to "**promote the best interests and welfare of children**." (emphasis ours) citing "*Fletcher v. Fletcher*, 447 Mich 871, 877, 526 NW2d 889 (1994). The act directs that it is "equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved." MCLA § 722.26(1); MSA. § 25.312(6)(1). Section 7b of the Child Custody Act deals specifically with grandparent visitation. MCLA § 722.27b(3); MSA § 25.312(7b)(3). The grandparent visitation statute is consistent with the general purpose of the act, in that it permits a court [452 Mich. 177] to enter a grandparent visitation order "if the court finds that it is in **the best interests of the child**" to do so. MCLA § 722.27b(3); MSA § 25.312(7b)(3). (emphasis ours)

See also *In Re Lang*, 236 Mich. App. 129, 133, 124, 600 NW2d 646, 650, 651, Per Curiam, "The Child Custody Act also provides guidance in Construing the meaning of "custodial relationship" because both statutes [*the child custody act and the adoption statute*, our comment] share a

**common purpose** of promoting **the best interests of the child**.

(emphasis ours) MCL 710.21a(b); MSA 27.3178(555.21a)(b), MCL § 722.26(1); MSA 25.312(6)(1), MCL § 722.27(1); MSA 25.312(7)(1). See *In re Barlow*, 404 Mich 216, 236, 273, 273 N.W.2d 35 (1978).

The No-Fault Divorce Act MCL 552 does not expressly sets out a statutory purpose, however, when dealing with issues of child custody between the parents the common law recognizes that following the divorce of a child's parents and entry of a custody order, the child's domicile is established by operation of law consistent with the terms of the custody order and is determinative of the child's domicile for all purposes, including the no-fault act. This holding is consistent with the Child Custody Act, MCL 722.21 *et seq.*, itself, which entrusts courts with making custody determinations in **a child's best interests**, (emphasis ours), *Grange Ins. Co. of Mich. v Lawrence* (Mich., 2013), Docket Nos. 145206, 143808. (Calendar No. 1). The Court must also determine the custody issues in light of the **best interest of the child** considering the statutory **best interests factors** listed in MCL § 722.23 of the Child Custody Act cited above. (emphasis ours). See *Sirovey v Campbell*, 223 Mich App. 59, 62, 565 NW2d 857, 860, 861 (Mich App, 1997).

In conclusion, no matter what definition is ascribed to legal custody, it is undisputed that the Judgment of Divorce granted Respondent-Appellee legal custody. Further, legal custody has been recognized by both the Legislature and the Judiciary as a separate and distinct component from physical custody. In addition the Adoption Act, the Divorce Act when dealing with custody issues and the Child Custody Act are in *pari materia* and not in conflict. There is simply no support for merging these two definitions of legal Custody and Physical Custody. Judicial construction is permitted only if the language is ambiguous or unclear. *Deschaine v. St. Germain*, 256 Mich App 665, 669, 671 NW2d 79, 81 (2003) *citing to Wortelboer v. Benzie Co.*, 212 Mich App 208, 215, 537 NW2d 603 (1995). The language of MCL 710.51(6) is not unclear. Therefore, judicial construction of the term legal custody is

not permitted. The Court of Appeals decision in this matter is unequivocally correct.

**PETITIONERS-APPELLANTS' ARGUMENTS DISPUTE THE POLICIES BEHIND THE  
STEP-PARENT ADOPTION ACT. POLICY DECISIONS MUST BE MADE BY THE  
LEGISLATURE, NOT THE JUDICIARY**

In their Motion for Reconsideration, and in this Application for Leave to Appeal, Petitioners-Appellants spent an inordinate amount of time discussing the purported implications of the Court of Appeal decision. Petitioners-Appellants' counsel anecdotally states that this Court's decision represents "a significant departure from established interpretation and practice." However, even assuming that these unsupported statements are true, this in and of itself is not a basis for this Court to alter its well-reasoned Opinion.

It is well established that "a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co. Gen. Hosp.*, 466 Mich. 57, 63, 642 NW2d 663 (2002). Moreover, "arguments that a statute is unwise or results in bad policy should be addressed to the Legislature." *People v Kirby*, 440 Mich 485, 493-494, 487 NW2d 404 (1992). "Statutory . . . language . . . cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of this Court." *Halloran v Bhan*, 470 Mich 572, 579, 683 NW2d 129 (2004). "[T]he argument that enforcing the Legislature's plain language will lead to unwise policy implications is for the Legislature to review and decide, not this

**IN THE MICHIGAN SUPREME COURT**

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In the Matter of AJR, Minor

Circuit Court No.: 12-24817-AY  
Court of Appeals No.: 312100  
Supreme Court No.: 147522

---

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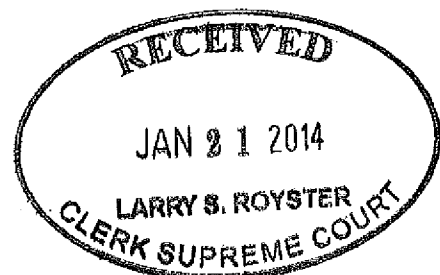
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**Attachments to Respondents-Appellee' Motion for Leave to File Brief  
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**B. "Trial transcript**

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# **ATTACHMENT "B"**



STATE OF MICHIGAN

SEVENTEENTH JUDICIAL CIRCUIT COURT (KENT COUNTY)

COPY

In the Matter of,

AIDAN JAY ROUSTAN,

Case No. 12-24817-AY

Minor Child.

TERMINATION OF PARENTAL RIGHTS OF NONCUSTODIAL PARENT

VOLUME I of II

BEFORE THE HONORABLE KATHLEEN A. FEENEY, CIRCUIT JUDGE

Grand Rapids, Michigan - Wednesday, July 18, 2012

APPEARANCES:

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(Susan Merrill)

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VOL 1

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STATE OF MICHIGAN

SEVENTEENTH JUDICIAL CIRCUIT COURT (KENT COUNTY)

COPY

In the Matter of,

Aidan Jay Roustan,

Case No. 12-24817-AY

Minor Child.

TERMINATION OF PARENTAL RIGHTS OF NONCUSTODIAL PARENT

VOLUME II of II

BEFORE THE HONORABLE KATHLEEN A. FEENEY, CIRCUIT JUDGE

Grand Rapids, Michigan - Thursday, July 19, 2012

APPEARANCES:

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1 they be marked and entered. I think we're on Exhibit 2?

2 THE COURT: They're already premarked as proposed  
3 Exhibit 3.

4 MS. RATHBURN: Okay.

5 THE COURT: Ms. Sobanski, any objection?

6 MS. SOBANSKI: It seems like a lot of superfluous  
7 information, but I don't object to the e-mails, especially  
8 considering they concern the communications --

9 THE COURT: Very good. I'll receive Exhibit 3 then.

10 (At 10:35 a.m., EX#3 received)

11 MS. RATHBURN: All right, your Honor. And what I  
12 planned to do was to go through these e-mails with Mr. Roustan  
13 just briefly.

14 BY MS. RATHBURN:

15 Q Mr. Roustan, unfortunately I don't think I have a copy that I  
16 can hand to you, but I'm going to question you about some of  
17 the e-mails.

18 A Okay.

19 Q The packet that you gave to me, I tried to organize them by  
20 year, and it seems to be the first one I got was from April of  
21 2010; does that sound about right?

22 A I think so.

23 Q And some of the e-mails are where you're -- let's see,  
24 starting off with -- well, first of all, according to Ms.  
25 Merrill, in 2010 you did have a January 8th, 2010 visit, and

1 Q Did you receive regular support?

2 A No, I did not.

3 Q Can you outline for me in 2010 the visitation that Mr. Roustan  
4 had after May 9th, 2010, until the end of the year 2010 with  
5 Aidan?

6 A Absolutely. After May 9 of 2010, Pierre came to visit on May  
7 10th for Aidan's birthday. We worked around his schedule, and  
8 he visited from six to eight p.m. at that point. And then  
9 over the course of 2011 there were four visits for a total of,  
10 I believe, 18 hours with Aidan.

11 January 15, 2010, again, working around his  
12 schedule, he had the visit from two to four p.m.

13 THE COURT: I'm sorry. Did you say 2010 or 2011?

14 THE WITNESS: I'm sorry, 2011. I'm sorry.

15 THE COURT: That's okay. I just wanted to make sure  
16 I'm on the right year.

17 THE WITNESS: May 11th, 2011, he visited from -- he  
18 was scheduled from 4:20 until 7:30, but he arrived at 5:00  
19 p.m., so it was from 5:00 until 7:30.

20 June 4, 2011, he requested to visit, but he learned  
21 he'd only be able to have Aidan for two hours that day, and so  
22 he said it wasn't enough time, and he chose not to visit that  
23 day.

24 On June 19th, that was Father's Day that year, I  
25 believe, he was able to visit from 1:00 p.m. to 7:00 p.m., and

1 he did so. And then July 3rd he had a visitation for the  
2 Fourth of July. He was to meet us in Ludington. He had  
3 available 7:00 to 7:00 that day. He arranged with us for 8:30  
4 to 7:00, because he was going to drive up to Ludington to meet  
5 our family there, and at 8:22 he texted that he'd be late, and  
6 he ended up arriving at 11:15, so the visitation in total was  
7 11:15 to 7:00 p.m., and he came -- I think he came a little  
8 late that day.

9 And then the day after Thanksgiving, November 25th,  
10 2011, he had requested an all-day visit after Thanksgiving as  
11 per the arrangements in the court documents. He confirmed it  
12 earlier that day -- excuse me -- earlier on the day of  
13 Thanksgiving, and then at about 9:00 p.m. I checked my e-mail  
14 and he said that he had car trouble and would no longer be  
15 able to make it. This was after Aidan had been told and he  
16 was in bed at that point.

17 Other than that, from January of 2012 to the date of  
18 filing, he only had one visit for two hours. It was on April  
19 20th. He requested visits on April 25th, the 27th, May 2nd,  
20 and May 4, and he --

21 THE COURT: I'm sorry. Can you give me those dates  
22 again? April 25 --

23 THE WITNESS: April 25, April 27, May 2nd, and May  
24 4. He requested visits on all of those days, and he cancelled  
25 all of those.

1                   On May 9th, 2012, he requested a telephone  
2 conversation for Aidan's birthday. He said he'd call between  
3 4:30 and 5:00, and we waited by the phone. He didn't call.  
4 He ended up calling I think about 5:30 or so, but we'd already  
5 gone out to dinner.

6 BY MS. SOBANSKI:

7 Q   Mrs. Merrill, you mentioned one telephone call that Mr.  
8 Roustan made to the child. Did he make any other attempts at  
9 telephone calls or conversations with the child through those  
10 sorts of means?

11 A   No.

12 Q   Have you been careful about allowing access to Aidan and  
13 working with Mr. Roustan's schedule and problems to allow him  
14 to see Aidan when it is possible?

15 A   Yes.

16                   MS. SOBANSKI: Your Honor, I have no further  
17 questions for my witness at this time.

18                   THE COURT: Very good. Ms. Rathburn?

19                   MS. RATHBURN: Your Honor, I'd like to note for the  
20 record, I notice that the petition was filed on May 9th, but  
21 my client didn't get notice until June, which I find to be  
22 somewhat awkward that there's a whole month in between that he  
23 didn't even know this was on the table. Does your notice have  
24 the same date?

25                   THE COURT: Let me see if I can find it. They file



1 Q And Ms. Merrill indicates on -- I think it's on what's been  
2 marked -- is it Exhibit 2, your Honor?

3 THE COURT: Three.

4 MS. RATHBURN: I'm sorry, of Ms. Merrill's timeline?

5 THE COURT: Yes, you're correct.

6 BY MS. RATHBURN:

7 Q Okay. Ms. Merrill indicates on her timeline that this visit  
8 was working around your schedule. Do you feel that that's  
9 accurate?

10 A I really didn't have much of a schedule.

11 Q And, in fact, the e-mail in April of getting the arrangements  
12 for this visit is you and Ms. Merrill attempting to come up  
13 with some agreement of when and where this visit will occur?

14 A Yeah.

15 Q And did you feel in control, that you were dictating the when  
16 and the where of how that visit occurred?

17 A No, not really.

18 Q The next page after the end of that 15-page e-mail, the next  
19 page is an e-mail from you to Ms. Merrill dated Sunday, April  
20 18th, and that was still finishing up with -- oh, that was the  
21 start of you asking for that visit. I'll flip to the page  
22 after that then.

23 It's an e-mail dated Sunday, June 20th, 2010, and  
24 it's addressed to Ms. Merrill and it's from you, and it's a  
25 letter that says, "Hi, big guy. I've missed you so much. I

VOL 2

1 was wondering how you've been doing." This is a letter that  
2 you drafted for Aidan's benefit, is that correct?  
3 A Yes, it was just specifically for Aidan, yes.  
4 Q And you said pretty generic things; "It's past Father's Day,  
5 I'm thinking about you. I hope your summer is going well. I  
6 love you. See you soon, son." Did you feel that this e-mail  
7 was age-appropriate for Aidan?  
8 A I thought so. I tried to make it so that he could understand  
9 it. I wasn't going to try to be too technical. Being a  
10 writer, I had to kind of scale myself back, but, yeah, I  
11 didn't think it would be a problem. I didn't know whether or  
12 not he heard them or -- well, not heard them, but they were  
13 read to him or he read them. I didn't get any response back,  
14 so I just kept sending them. I really didn't care whether or  
15 not he read them or not, but --  
16 A Okay. And did you have other means to contact him, such as  
17 stopping by? Ms. Merrill testified that she felt that you  
18 could just stop by whenever you felt it necessary to see  
19 Aidan. Do you agree with that?  
20 A Well, no, not really, for several reasons. One, I knew it was  
21 always a confirmation thing whether or not they would be home,  
22 whether or not Aidan was home, but mostly due to  
23 transportation issues, I could never drive all the way over  
24 there to Lowell to see him at all.  
25 Q And as far as contacting Aidan by phone, did you always have a

**VOL 2**

1 phone available to you so that you could make that type of  
2 contact?

3 A Yeah, I did have a reliable phone, but it was mostly about  
4 scheduling, him being available. I think one time I called  
5 and I talked to him for maybe just a few minutes, and then he  
6 passed the phone to his mom and that was it. It just didn't  
7 seem like he'd be available to talk because he was so busy,  
8 and I was just afraid that I was just going to be denied; not  
9 because they didn't want me to talk to him, but because he  
10 just would be too busy.

11 Q He had things going on, okay. Well, the next page I have is  
12 another e-mail dated August 3rd, 2010, and it starts off:  
13 "Hi, Buddy. This is your dad writing a letter. I'm sorry I  
14 haven't been able to see you." So that again was another e-  
15 mail that you sent to try to get through to him?

16 A Yeah.

17 Q The next page is another e-mail from you to Ms. Merrill dated  
18 Wednesday, September 8th, 2010. It starts off: "Hi Buddy.  
19 I've been thinking about my little man and how he's doing. I  
20 heard you had your first day of kindergarten." So there again  
21 is another letter that you sent to Aidan.

22 A Um-hum.

23 Q The next page is an e-mail dated Wednesday, October 20th,  
24 2010, and it's addressed again from yourself to Ms. Merrill,  
25 and it says: "Hi. I've missed so much of reading to you,

1 Buddy, so I have an idea. Attached to this letter is my voice  
2 reading you a children's story, one I'm pretty sure you've  
3 never heard, and they'll be plenty more stories to come."

4 A Invisible Alligators.

5 Q "One of the fun things about being an author, you know. Your  
6 mom with her awesome powers needs to summon my voice, and  
7 guess what? You'll be hearing me right away." And so was  
8 there a voice attachment to that?

9 A Yeah, I recorded my voice reading the book, and I attached it  
10 to the e-mail so that he could hear it.

11 Q Did you ever get confirmation from Aidan if he heard the  
12 story?

13 A No.

14 Q The next page is an e-mail that starts November 17th, 2010,  
15 and it starts off -- I'll try to go to the back -- that's  
16 where it got a little confusing, because the oldest in time is  
17 actually at the back of the e-mail. It looks to be that you  
18 started back on November 17th sending a letter to Ms. Merrill  
19 indicating that you wanted to set up some time to visit with  
20 Aidan. Does that sound right?

21 A Yeah.

22 Q And that you're working through with Ms. Merrill in the pages  
23 preceding that where she responds to you back on Wednesday,  
24 November 17th. She responds that the day that you requested  
25 was not available because they had things going on.

Friday to Sunday if he chooses. Why was it written permissively that if he chooses to have parenting time?

A Because he said he didn't want him overnight at the time.

Q So even when this order was written, it wasn't anticipated necessarily that he would get overnights?

A He was very adamant that he only wanted -- he wanted limited visitation. He was more than willing to only have three days a week, less if I'd allow him that.

Q And then the Monday, Tuesday, and Friday, the 3:00 p.m. to 7:00 p.m. required him to call and get your permission first before those visits occurred; is that correct?

A So that we'd know that he was planning on coming and could base Aidan's schedule accordingly, yes.

Q Isn't it true there were times that he called to schedule visits and you declined for him to have the time?

A He never called.

Q He never called. Would he e-mail you and ask for visits and you would decline for him to have the time?

A He would e-mail, and I would say that he was busy; pick an alternate date.

Q What kind of things would a busy, four, five, six year old have going on that he couldn't do the dates?

A Aidan has piano lessons, Boy Scouts, he has tennis lessons, football practice, little league. He's quite a busy young man.

1 A Yeah.

2 Q And that she says: "I'll have to figure out what's going on  
3 with his other activities and get back to you. He has a lot  
4 of extracurriculars this year. I assumed you couldn't drive,  
5 and I didn't know if you had gotten back or not." And then  
6 she's asking about seatbelts for the car.

7 Since there was not -- was there a visit that  
8 occurred then in November of 2010?

9 A I believe so.

10 Q Because it looks to me by November 18th, she indicates to you  
11 in an e-mail from Ms. Merrill to you: "As for Monday, we can  
12 make that 4:30 instead of 4:20. We have some new houses in  
13 our neighborhood. The bus is taking a new route." And it was  
14 setting it for November 22nd.

15 A I think that's about right.

16 Q And then it looks to be that year on the 25th of November you  
17 sent a poem that you had written for Aidan to see?

18 A Which date?

19 A On November 25th, 2010?

20 A Yes.

21 Q "A poem I wrote about an hour ago for Aidan. It's called I'm  
22 Still There. I recorded it and attached it to this e-mail  
23 along with a family picture." And you got really sad as you  
24 were writing it.

25 A Yeah.

**VOL 2**

1 THE COURT: I'm sorry. What date are you looking at  
2 again?

3 MS. RATHBURN: November 25th, 2010.

4 THE COURT: Oh, I've got it.

5 BY MS. RATHBURN:

6 Q And that was what I had for the 2010 visits. In 2011, which  
7 starts on the page after that, on January 1st, 2011, you sent  
8 an e-mail to Ms. Merrill requesting time on the 15th of  
9 January to visit with Aidan. Does that sound correct?

10 A Yeah.

11 Q And Ms. Merrill responded nine days later, it says: "It's  
12 been nine months since you've seen him." which that wasn't  
13 accurate if you had a November visit; is that correct?

14 A I think so.

15 Q It's hard, I know. We're going back so far in time.

16 A Yeah, I know. There was a November visit there, I'm just  
17 trying to figure out if it was 2010 or not, but I do recall  
18 one there. Yeah, it doesn't make any sense.

19 Q Okay. And that responds that she was concerned, that "He's  
20 been testing boundaries lately, and we're concerned that he  
21 won't view you as an authority figure." So a place like Chuck  
22 E. Cheese where he's run off and you may not be able to corral  
23 him -- basically she was telling you you can't take him to  
24 Chuck E. Cheese?

25 A Basically.

Q Do you mind if I look at it?

A Sure.

MS. SOBANSKI: I have an extra copy here. Your Honor, would you like a copy as well?

THE COURT: That would be fine.

BY MS. RATHBURN:

Q Okay. So beginning with 2009, "He stops exercising regular parenting time, though continues to see the child with frequency." What does that mean?

A He started missing visits. He -- up until then he would make the three days a week unless he had a work conflict, and then we worked around it and scheduled him for another time. At that point in time he started missing visits and not making them up.

Q I'm sorry. I'm just looking at this for the first time. So you're saying for 2010 there were only just the two visits?

A That's correct.

Q Now, in addition to these visits, did Mr. Roustan make any attempts through other media means such as e-mail or cards or anything else to make contact with Aidan during 2010?

A He never sent cards. He did send sporadic e-mails to Aidan; however, we chose not to let Aidan read them since they talked about his poker parties, and eventually finding a job that will take care of him, and things that a three, four year old wouldn't understand.

**VOL 1**



1 Q And we're also concerned about him being in the car. Was that  
2 an ongoing concern with making sure you had a proper car seat,  
3 booster seat for Aidan?

4 A It was brought up on occasion here and there, yes. I think  
5 for quite a time I did have a booster seat and I also had a  
6 car seat, but --

7 THE COURT: You did or did not?

8 THE WITNESS: Many times I already had a booster  
9 seat for him. Sometimes I had to borrow one. Sometimes I  
10 think I had to borrow a car seat as well.

11 BY MS. RATHBURN:

12 Q Did Ms. Merrill ever offer up Aidan's booster from her car for  
13 you to borrow?

14 A Yeah, she's offered it on occasion, yeah.

15 Q Okay. So, was Aidan ever improperly buckled in a car without  
16 a booster or a car seat?

17 A Never. I don't think so.

18 Q So then you did get a visit on January 15th, and Ms. Merrill  
19 indicates that went from two to four on her Exhibit 2, where  
20 she had her list.

21 A Yeah.

22 Q Now, again, she indicates that this is working around your  
23 schedule. How was this visit working around your schedule?

24 A At the time I didn't have any kind of schedule. It was  
25 basically what they could offer me was from two to four, and I

VOL 2

1 Q And how does he refer to Mr. Roustan?  
2 A Daddy Pierre.  
3 Q Daddy Pierre. And does he indicate that he likes Daddy  
4 Pierre?  
5 A He has fun with him.  
6 Q Does he love him?  
7 A Yes, but to be fair, he loves everything; football, little  
8 league, ice cream. He loves everybody and everything that  
9 comes in contact with him.  
10 Q Well, not to be flip, but he doesn't know me and he wouldn't  
11 love me.  
12 A Yes, he would. He would hug you.  
13 Q He would hug me?  
14 A He absolutely would hug you. He's a hugger, as he says.  
15 Q So you think if I saw your son he would give me the same level  
16 of affection he would give Mr. Roustan?  
17 A Yes, as long as you were deemed to be a friend. I should  
18 quantify that. He will not approach random strangers and hug  
19 them, but if they are with us talking to us, he absolutely  
20 will hug people that are talking with us. He's hugged pizza  
21 delivery men before.  
22 Q And for those visits then that he did have with Mr. Roustan,  
23 say, in 2010, did your son willingly go with Mr. Roustan for  
24 those visits?  
25 A He did. He was -- by the May 1 he was a little more hesitant

VOL 1

1 Q It looks to be from Ms. Merrill's list that on May 11th there  
2 was a visit scheduled, and she indicated you arrived at five  
3 p.m., so that you would only have a two and-a-half hour visit.  
4 Do you recall if you had a normal time visit on the May 11th,  
5 2011?

6 A I'm trying to remember. We took him to the park. I can't  
7 remember showing up at five.

8 Q Well, let me ask you this. Now, Ms. Merrill had filed a  
9 motion regarding parenting time. In that motion she indicates  
10 on May 11th he saw him for three hours. Would three hours  
11 sound more correct? Yeah, I got two different times that she  
12 indicates.

13 A Okay. I think maybe three hours was more correct. I can't  
14 quite remember for sure, but we went to Creekside Kingdom  
15 Park, which was right around the corner there, but we also had  
16 pizza. We had cake, too. That was for his birthday. We flew  
17 some kites, played.

18 Q Had some good time with him then?

19 A Yeah. So maybe it was closer to three hours, but I can't be  
20 certain.

21 Q All right. Well, then I'm going to move to the next set of e-  
22 mails in my Exhibit 3 that starts off with the first one is  
23 May 19th. And I'm going to flip back through those four  
24 pages, and then there's a second e-mail that's six pages long  
25 that carries through some of these same dates.

VOL 2

1 to go. He didn't really remember who he was or anything like  
2 that. He was very concerned about leaving, and we reassured  
3 him and told him who he was -- excuse me -- told Aidan who  
4 Pierre was and sent Aidan on his merry little way.  
5 Q And how did he do on that visit?  
6 A He did all right. He did all right.  
7 Q Had fun?  
8 A Yeah. They always have fun. They go to fun places.  
9 Q And then in 2011 you have four visits total on your list.  
10 Again, did Aidan remember who he was in 2011 to go on those  
11 visits?  
12 A The January one, no, he did not. We had to tell Aidan who he  
13 was again and go through that procedure again. By the time  
14 that May came around he remembered him a little bit more, and  
15 then since then he's remembered him.  
16 Q Now, has Aidan ever requested to call his dad?  
17 A No.  
18 Q Would you facilitate that if Aidan did want to talk to him on  
19 the phone?  
20 A Yes.  
21 Q Now, there was a request at some time by Mr. Roustan to do  
22 Skype. Is that something that ever occurred?  
23 A No. The last time he requested, my computer was having some  
24 issues, and we're trying to resolve those.  
25 Q Now, what reasons did Mr. Roustan give for not making the

**VOL 1**

1 So to start off with, going to the back on page five  
2 out of this six-page e-mail. On May 18th at 8:40 p.m. you  
3 sent an e-mail to Ms. Merrill: "I talked to Kryz again today,  
4 and she was thinking of taking Aidan to the zoo with the girls  
5 for a few hours." Do you recall that?

6 A I think so.

7 Q And that this batch of e-mail -- what do you recall happened  
8 with your request to take Aidan to the zoo?

9 A I remember it being on a Saturday, so it's going to be for a  
10 much lengthier time. I think we were thinking three to four  
11 hours, maybe more. That's kind of what we were hoping for.  
12 They could give us two hours, and they were leaning to not  
13 taking him over to that side where John Ball Park Zoo is.  
14 They would much rather prefer that he be over at Lowell, out  
15 of respect for our gas and for travel and all that.

16 We didn't see an issue with that, but we were hoping  
17 for more hours, which is why -- to kind of negate the traffic  
18 and get more hours, but all they could fit us in for was two  
19 hours on that day. It ended up not working out.

20 Q On her recollection here she's got -- well, actually I got a  
21 couple different things here. I have May 11th you saw him for  
22 three hours, which there doesn't seem to be any e-mails that  
23 regarded that visit, but if she's indicated there was a May  
24 11th visit, do you have any reason to discredit that?

25 A No.

**VOL 2**

1 visits, let's say, in 2010, if you recall?

2 A No money, no car, and that was really about it. He honestly  
3 didn't request them very often other than the times that were  
4 indicated. He may not have requested them other than the  
5 times indicated; I just don't remember.

6 Q And just to clarify things, where do you reside at this time?

7 A In Lowell.

8 Q And where did Mr. Roustan reside in 2010?

9 A I believe on Norwich in the Grand Rapids area.

10 Q And approximately, if you know, what is the time travel  
11 distance between Lowell and Norwich in Grand Rapids?

12 A I think it's about a half hour, 45 minutes.

13 Q Do you know if a bus could come from Grand Rapids to Lowell  
14 for him to take a bus to your house?

15 A I don't think buses come out to Lowell. Cabs do, but buses  
16 don't.

17 Q Did you ever offer to Mr. Roustan that you would help with  
18 transportation to allow the visits to occur?

19 A He never asked.

20 Q Okay. And then in 2011 -- I'm trying to be somewhat specific  
21 if you remember --

22 A Sure.

23 Q -- did he have similar excuses for not making the visits at  
24 that time?

25 A Yes.

1 Q June 19th. Oh, actually she says a couple different things.  
2 All right. On her Exhibit 2, Ms. Merrill indicates that on  
3 June 19th you were late, but you had Aidan from one to seven.  
4 Does that sound accurate?  
5 A Yeah.  
6 Q Because in her motion she indicated that on June 19th you only  
7 had him for three and-a-half hours?  
8 MS. SOBANSKI: Yeah. That was a clerical error on  
9 my part; nothing to do with the information provided by my  
10 client. I'm sorry about that.  
11 BY MS. RATHBURN:  
12 Q So it was a longer visit for Father's Day?  
13 A Yeah. We went to Millennium Park beach, I believe, and spent  
14 -- I don't think that was the only thing we did, but we did  
15 that.  
16 Q That was part of the day?  
17 A Yeah.  
18 Q Okay. Then the next e-mail I have after that is a letter for  
19 Aidan, dated Monday, September 12th, 2011: "Hi, Big Guy.  
20 It's your daddy. I miss you."  
21 A Yes.  
22 Q And so even though you don't know if he was getting them, you  
23 were still trying to reach out to Aidan?  
24 A Yes.  
25 Q The next e-mail I have is in regards -- the next one I have

1 MS. SOBANSKI: Objection, your Honor. If we're  
2 looking at his behavior in the two years prior to the filing  
3 of this petition, then visits after May 12th when he was  
4 informed of this petition would not be relevant to this  
5 matter.

6 THE COURT: Very good. Ms. Rathburn?

7 MS. RATHBURN: Your Honor, I would ask that this  
8 Court also has to evaluate the best interests of the child.  
9 I'm going to make some arguments later that I think that  
10 there's something kind of hinky that he didn't get notice of  
11 this going on, you know, papers actually served on him for a  
12 month, and we're going to count that month that he didn't  
13 actually have notice.

14 The Court also not only has to look at those two  
15 prongs, whether these two things happened in two years; it's  
16 permissive for the Court to make this decision, and they have  
17 to balance the child's best interests. And so I would say the  
18 fact that the child has been having ongoing regular visits  
19 since May until July affects the child's best interests.

20 THE COURT: I think both of you have good points to  
21 make. I think the notice issue is very important. So if  
22 nothing else, I'd be interested and we'll take testimony from  
23 the date May 9th through the date that notice was sent through  
24 June 14.

25 It's my understanding that the legislature put the



1 two-year look-back in for a purpose, because once people get  
2 notice of the fact that somebody is seeking to terminate their  
3 parental rights, everything changes. So I'll at least allow  
4 for that month and a week, those five weeks any additional  
5 testimony, but beyond that I don't think it's relevant.

6 So, I'll sustain part of the objection and grant  
7 part of the objection.

8 BY MS. RATHBURN:

9 Q Well, Ms. Merrill, then can you answer -- you said -- I think  
10 you had on here the May 9th he didn't, but how many visits has  
11 he had from May 9th until June 14th?

12 A I'm sorry. I'm not prepared to answer that question without a  
13 calendar or something in front of me. I don't have that  
14 information.

15 THE COURT: So if I gave you a calendar that would  
16 help, but you wouldn't have your calendar; is that what you're  
17 saying?

18 THE WITNESS: Right. I can try. I know that he did  
19 make more of an effort. He said that he had a new job, and  
20 that he was, quote, "rolling in it", so he could now afford to  
21 come out and visit more regularly. However, he did miss some  
22 of those visits as well. Again, I'm talking without my book.  
23 I'm sorry.

24 Q And if I were to remind you that on May 23rd, 2012 he  
25 attempted a visit and you weren't home; is that accurate?

1 A At that time we had filed a petition to review parenting time  
2 in the best interests of the child, and per my lawyer's  
3 instructions, we were not home.  
4 Q Oh. All right. And so after May 24th, did he have a visit  
5 after that?  
6 A I'm sorry, I -- I'm sure he's had a visit after May 24th, but  
7 I don't have any of that information in front of me.  
8 Q You had information in the pleadings that you filed, and I'd  
9 have the Court take judicial notice.  
10 MS. RATHBURN: Part of her motion to not allow Mr.  
11 Roustan to have parenting time actually had some additional  
12 information in it about the visits, and she signed this back  
13 on the 23rd of May. I don't know if the Court has access to  
14 that file or --  
15 THE COURT: I do not. I only have the adoption  
16 file.  
17 MS. RATHBURN: Okay. I don't know if you want the  
18 case number to --  
19 THE COURT: Go ahead.  
20 MS. RATHBURN: Okay.  
21 THE COURT: Isn't it the same case, the 08 divorce  
22 case?  
23 MS. RATHBURN: It is.  
24 THE COURT: I've got that.  
25 BY MS. RATHBURN:

1 of everything that he gets to learn. He's a very smart boy.

2 Q And did you discuss with him what that would mean?

3 A Yes, ma'am.

4 Q What did you tell him?

5 A Well, we told him that in terms of our family structure, it

6 wouldn't really change how we view him in our family, but that

7 it meant that he would get the option to change his last name

8 if he wants to, and we talked about what last names meant.

9 And we talked about how it meant that he would not -- he would

10 always have his biological father; but that his father, the

11 primary caregiver or whatnot would be Steve. And he then

12 asked us to go through with that because it's like how it is

13 anyway. He said it's how I'm living anyway; why don't we just

14 go through with it.

15 Q Okay. Did you explain to him that meant that he would never

16 see Mr. Roustan until he's 18?

17 A I never said that, because I don't believe that, ma'am. I

18 believe that he's welcome in our house as much as he would

19 like, and under -- we would continue visitation if he wants.

20 That would not change. He will always be his biological

21 father.

22 Q Okay. But do you understand that legally you could petition

23 the court to have your son's name changed without having to go

24 through an adoption?

25 A I don't know that that's fair or right. I guess I didn't know

1 schedule is Wednesday and Friday after school, 4:20 until  
2 7:00. And that was what you discussed and was what you and  
3 Ms. Merrill had informally agreed upon; is that correct?  
4 A Yeah. That's because he was still going to be in school. It  
5 was 3:30 because where he was going previously he'd be home by  
6 3:30 or be done with school by 3:30, if I remember, and we  
7 were talking, trying to work something out, and 4:20 was going  
8 to be better.  
9 Q The best time for that to happen?  
10 A Yeah.  
11 Q Now, on June 13 you were actually in court for a motion; is  
12 that correct?  
13 A Was that the modification for -- yeah, I think it was.  
14 Q Do you recall being there, and that I appeared on your behalf  
15 on that day?  
16 A Yes.  
17 Q And Ms. Merrill, do you recall what she was asking for as far  
18 as your parenting time to change?  
19 A She was asking for supervised visits once a month. I don't  
20 recall hearing specific hours, but it was only once a month,  
21 supervised visits in her home or with a friend that we could  
22 agree on, and I think that was about it.  
23 Q All right. And did you agree with that request?  
24 A No.  
25 Q And what did you propose happen instead?

1 questions for this witness.

2 THE COURT: Very good. Ms. Rathburn?

3 MS. RATHBURN: Just briefly.

4 RECROSS-EXAMINATION

5 BY MS. RATHBURN:

6 Q Since Mr. Roustan's visits have become more steady, let's say  
7 since May, has your son exhibited those same behaviors after  
8 every single Wednesday?

9 A Yes, ma'am.

10 Q You said these things go on for three weeks?

11 A Yes, ma'am.

12 Q So for two months he's been in a manic state, basically?

13 A He's actually started to show a new symptom, which is what we  
14 believe to be panic disorders. We've gotten him the help of a  
15 therapist since then. But he is in a -- these panic attacks  
16 kind of look like he needs to be sick, he feels like he needs  
17 to be sick all the time. He is very anxious about what's  
18 going on. It's been really rough on him.

19 Q And this is after he spends two hours in a McDonald's with Mr.  
20 Roustan?

21 A Yes, ma'am.

22 Q Do you know if your child's being abused during these two  
23 hours?

24 A Like I told you, I don't know. I'm not there.

25 Q Does he have any marks or bruises when he comes home?

1           So after him hearing me say that, he simply said, no  
2   thank you. He just went with the sub. He was fine. In some  
3   cases he doesn't tell me, so I ask him specifically, what does  
4   your mom say? And he would say something like she's fine with  
5   it or something. So I'm kind of on the ball just trying to  
6   see what he is allowed to do and what not in the short span of  
7   time of two hours or three hours or whatnot.

8           Overall, though, he's a very well-behaved kid. He's  
9   wonderful to other kids. So it was not much of an issue of  
10   having to chase him down or anything like that. I think I  
11   recall having him in Chuck E. Cheese once a year and-a-half or  
12   two years ago, and he wasn't crazy. He didn't go nuts. He  
13   was pretty normal like other normal kids in Chuck E. Cheese,  
14   pretty normal, trying to test the boundaries all the time, but  
15   I'm right there to just let him know it's not going to happen.

16   Q   Well, Ms. Merrill testified she felt that you really don't  
17   have this kind of relationship with Aidan where you can set  
18   boundaries or be an authority figure with him. Do you agree  
19   with that?

20   A   No, I don't agree with that at all. I've been wanting him  
21   over at my house for the longer periods of time. Granted, the  
22   transportation was an issue, but it was something that we were  
23   always trying to press; not get told that he wasn't going to  
24   be allowed over at our house, so -- but that's where it really  
25   comes in, is getting to be the parent in your home and getting

1 to set the rules and the boundaries for the two and-a-half  
2 three hours in a visit. Outside in a public space it's a  
3 little bit limited, but you can still press certain rules.  
4 did the best I could with the time that I had.

5 Q Do you feel you have a relationship with Aidan?

6 A Yes, I very, very, very much do. He loves holding my hand  
7 he loves hugging me and he loves talking to me about Star  
8 Wars, Ninja, Cut the Rope, Harry Potter, the girls, the  
9 stepsisters.

10 He does say some negative things about the adoption.  
11 He's mentioned on occasion that he thinks it's terrible that  
12 I hate Steve, and I hate Susan for Steve marrying his mom, and  
13 that's why I'm contesting the adoption, which I blinked. It  
14 was not something that I ever mentioned to them or even mentioned  
15 to Aidan, so I believe I remember calling him and telling him  
16 I don't hate your step dad. I don't hate your mom at all.  
17 I kind of left it at that, though. I didn't want to discuss the  
18 issue further because there's a short amount of  
19 time. I want him to just kind of enjoy his time, so I didn't  
20 press it unless he wanted to ask, you know, more questions.  
21 He never really did. I think that was just about the only  
22 kind of negative things he ever did say.

23 Q Have you noticed any changes in Aidan with your visits with  
24 him this year? I mean, do you see any negative behavior or  
25 cringing?

1 dinner with us. We've had him over for dinner with his wife.  
2 I think at that point they were dating. I don't remember. I  
3 think they were dating at that point, but we've encouraged  
4 them to come over.

5 Q What about all of his activities? Do you let him know when he  
6 has this or that or soccer I think you said, football, those  
7 sorts of things?

8 A I would if he asked. To be honest, I haven't, because --  
9 well, if he isn't showing up for regular visits, I don't  
10 really hold much hope that he'll show up for football  
11 practice.

12 Q Is that based upon the fact that Aidan gets upset if dad  
13 doesn't show?

14 A Yes, ma'am. He gets very upset.

15 Q So the one time, for example, the phone call on May 9. He  
16 gives him a call between 4:30 and 5:00. You guys left for  
17 dinner, and he called later on. Did Aidan call him back?

18 A No.

19 Q Did he leave a phone number to be called back?

20 A Yes, he did.

21 Q All right. So all total, the two-year time period that we're  
22 talking about, there were how many contacts total?

23 A Six, I believe -- no. If we're not counting the one in  
24 January it would be five -- no, six.

25 Q Six times?



1 A No.

2 Q No? Okay. Are you concerned that there were gaps in your  
3 visitation with Aidan, and that you weren't always seeing him  
4 every week?

5 A I was worried at one point that he was going to be very, very  
6 hesitant to even talk to me or look at me or even touch me,  
7 but every visit he's always been incredibly super receptive,  
8 much to my shock. It was something that I was always worried  
9 about, but -- so it made me feel really, really good that he  
10 is so fun-loving, I guess.

11 Q Just going backwards on one thing that was testified about  
12 with Ms. Merrill, that you never asked her to drive Aidan to  
13 your home.

14 A Yes.

15 Q Is that correct?

16 A That is true.

17 Q Did you ever ask her to meet you halfway?

18 A No, I don't think so.

19 Q And why was that?

20 A I took it to mean that the petition said that I was providing  
21 the transportation specifically, since she wrote it up. I  
22 wanted to honor that. I wanted to respect that. I didn't  
23 want to push it, so if I didn't have the transportation, I was  
24 out of luck. It was a real bummer. I recall being just really  
25 down for months not having the means to get there. I wanted

1           And although it seemed selfish to know not only in  
2 your heart, but in society's eyes that this is my son and that  
3 I have the ability to take care of him without being  
4 questioned, specifically because this would be my only son  
5 because my wife can't carry children, and at the same time  
6 having to deal with the selfishness, it was tough knowing that  
7 I'm not a deadbeat.

8           I'm not someone that has been gone from since he was  
9 born and didn't want to ever be a part of his life. And the  
10 reason that I had been working hard to get myself another  
11 vehicle and get my license back, to pay all my child support  
12 back, to land this job that I had, it was all ultimately for  
13 him. It was for my girls and my wife, too, but it was going  
14 to be for all of them. It was going to be for him. So I just  
15 had to say no.

16 Q       Sitting here today, do you still think that that's in the best  
17 interests for Aidan, for you to maintain your rights?

18 A       Yes.

19 Q       Now, do you have family that Aidan has any contact with?

20 A       No. I mean, I have family, but he has no contact with them.

21 Q       Is it because the contact would be through you?

22 A       Is it because of what?

23 Q       The contact would have to be through you and you have limited  
24 time with him?

25 A       Yeah, that's -- yeah.

1 16th or the 18th. It was on either the Wednesday or the  
2 Friday of the week following, I believe, he visited.

3 Q All right.

4 A After that was -- after the petition for the change of child  
5 visitation rights had been put in, and I know he did not visit  
6 because that order had been put in. He did not visit until  
7 the June 8th court date.

8 THE COURT: Very good. Anything else, Ms. Sobanski?

9 MS. SOBANSKI: No, ma'am, nothing else.

10 THE COURT: Ms. Rathburn?

11 MS. RATHBURN: Just a few questions as I was  
12 thinking about it.

13 RECROSS-EXAMINATION

14 BY MS. RATHBURN:

15 Q Your wife testified that Aidan's a pretty busy little guy, has  
16 lots of activities. Do you know what days of the week he has  
17 activities scheduled?

18 A Currently he has tennis in the morning Monday through  
19 Thursday. He has piano lessons that are -- Wednesday  
20 afternoon, but like today we're rescheduling that for probably  
21 tomorrow afternoon if his piano teacher is available. At the  
22 times that she was referring to, Tuesday nights he had Cub  
23 Scouts. Soccer he had, I think, three nights one week, and  
24 that one Mr. Roustan actually did pick Aidan up and take him  
25 to his soccer practice. I picked Aidan up from his soccer

1 truth, so help you God?

2 MR. ROUSTAN: I do.

3 THE COURT: Thank you. Please be seated.

4 PIERRE DOMINIQUE ROUSTAN

5 (At 4:33 p.m., sworn as a witness, testified as  
6 follows)

7 DIRECT EXAMINATION

8 BY MS. RATHBURN:

9 Q Good afternoon, Mr. Roustan.

10 A Good afternoon.

11 Q Where are you currently residing?

12 A At 1015 Norwich Avenue, Grand Rapids, Michigan, 49503.

13 Q How long have you resided there?

14 A Two years.

15 Q Do you know about the date you moved in there? Was it 2010?

16 A January, yeah.

17 Q And with whom do you reside?

18 A My wife, Krista Roustan; two girls, Isabella Welter and  
19 Madonna Welter.

20 Q You'll get this. That's an easy one. Were you married at the  
21 time in 2010 when you got --

22 A Yes.

23 Q Yes? Or did you marry shortly thereafter?

24 A After, yeah.

25 THE COURT: You can't -- Ms. Roustan, you can't kind

1 of give him answers, all right?

2 MS. ROUSTAN: Sorry.

3 MS. RATHBURN: If he doesn't know, we're good, trust  
4 me. We'll be all right. Do you want me to block her view  
5 then?

6 THE COURT: It's okay. I see Ms. Roustan back there  
7 giving him hand signals.

8 MS. RATHBURN: And I don't think that's a malicious  
9 sort of thing, but you need to look at me and answer me.

10 BY MS. RATHBURN:

11 Q So, you've been living with Ms. Roustan, her two children. At  
12 the time that this judgment of divorce was put together, Ms.  
13 Merrill testified that this was something that you and her  
14 came up with together; is that correct?

15 A Yes.

16 Q Did you have an attorney helping you?

17 A No.

18 Q Were you in agreement with those terms?

19 A When it was presented to me -- that was the only time I saw  
20 those, and it was not something that we had discussed, but  
21 when it was presented to me I accepted it.

22 Q And where were you at this time in your life, at the time that  
23 the judgment was entered? I mean, did you have your own  
24 housing, did you have a job?

25 A That was 2010. I was working - and this is for the divorce?

1 Q Yes.

2 A I was working at Closed Captioning, Inc. 40 hours a week full-  
3 time. I was also working a part-time job at Meijer as a  
4 cashier. I think it was about a half a year later after the  
5 petition was then filed due to health reasons I actually lost  
6 my job, also the part-time job, and so for the summer I was  
7 trying to look for more work.

8 THE COURT: I'm sorry. What summer was this?

9 MS. RATHBURN: Two-thousand ten.

10 THE WITNESS: Yeah.

11 THE COURT: Okay. So you lost your job in the  
12 summer of 2010?

13 THE WITNESS: Right before the summer. It was  
14 around May and June. And at the time I was living in an  
15 apartment -- at first I was living in a college --- it wasn't a  
16 frat house, it was just two college kids who were going to  
17 Kendall University, Kendall, and it was an apartment just like  
18 any other apartment. I stayed there for just two months and  
19 figured that it was not going to work. I was not making  
20 enough money for the rent, so I moved to another apartment  
21 with some co-workers of mine.

22 After that then, around the time that I lost my job,  
23 I had met my wife, and I moved in with her and a friend of  
24 hers. And then a half year later we moved into the house that  
25 we are now currently in.

1 BY MS. RATHBURN:

2 Q Okay. So that would actually be 2011 you moved into the house  
3 on Norwich?

4 A Maybe it was 2009 when all this happened. Yeah, 2010, January  
5 was when I moved into this house; 2009 was when we got  
6 divorced and I was from apartment to here, lost my job, and  
7 then I moved into the house in 2010.

8 Q Very good. Now, for 2009, did you get any more -- did you  
9 have any different employment or any means of income for the  
10 remainder of that year?

11 A After I lost my job, no. After I lost both jobs, no. Up  
12 until September of 2009 I obtained employment through  
13 Manpower, got a job at Amway, and -- or I made note of that to  
14 the Friend of the Court, got income withholding, started  
15 taking money out of the check for Manpower.

16 Around that time, though, my car got repossessed,  
17 and because Amway is off the bus route I couldn't make it over  
18 there. So at that time after losing the job at Amway I was  
19 unemployed.

20 THE COURT: You're talking Amway, the manufacturing  
21 facility, as opposed to the Amway Hotel?

22 THE WITNESS: Yeah. No, not the Amway Hotel.

23 THE COURT: I just wanted to be clear.

24 BY MS. RATHBURN:

25 Q The Amway out in Ada, correct?

1 A Right.

2 Q Because there's clearly buses that come downtown. So you were  
3 working at Amway -- well, let's start off here. Do you have a  
4 college degree?

5 A Yes.

6 Q And what's your background? What degree did you get?

7 A English with an emphasis on writing. It's basically creative  
8 writing.

9 Q All right. And when you were working in 2009 for the Closed  
10 Captioning that was utilizing that degree?

11 A Yes.

12 Q The Meijer's job was just --

13 A It was just on the side. It was part-time. It varied, the  
14 hours varied, but it always varied with the schedule of my  
15 main full-time job.

16 Q And what type of work were you doing at Amway?

17 A It was packaging. It was basically industrial, tons of  
18 packaging.

19 Q All right. And then after you lost your Amway job, what time  
20 line do you think you lost the Amway job?

21 A It was either September or October.

22 Q Of 2009?

23 A Yeah, I think it was 2009.

24 Q Okay. When did you next pick up employment then?

25 A On and off. There was one day I even did roofing just to get



1       some money. I just focused on the freelancing, tried to get  
2       some clients going so I can work on writing while looking for  
3       a full-time job. The next time I found something solid,  
4       legitimate was by the end of February of this year.

5   Q    In 2012?

6   A    Yeah.

7   Q    And what were you doing in February of 2012?

8   A    In all my searching through the job boards and all that I  
9       found this one, and I went in for it. It basically just  
10      relying on the hit or miss, and you just keep trying, keep  
11      trying, keep trying. And I tried, not expecting anything; it  
12      was Laws.com over in Manhattan, New York.

13           THE COURT: What was it called?

14           THE WITNESS: Laws.com.

15           THE COURT: L-a-w-s?

16           THE WITNESS: Yeah, period, com. That's actually  
17      their business name. It's not only their website, but that  
18      was their business name. And they're based out of Manhattan,  
19      New York. I sent my resume in, it was in February. About two  
20      days later they contacted me back, they interviewed me, asked  
21      me to do a nonpaid writing assignment. They gave me an hour  
22      deadline. I wrote it, sent it in. A few hours after that  
23      after reviewing it, they asked for a six-hour paid trial to  
24      see how well I could handle it; turned it in. The very next  
25      day they offered me the job for 40 grand a year.

1 BY MS. RATHBURN:

2 Q And so did your payments to Friend of the Court start back up  
3 once you got this regular job going again?

4 A It didn't start right back up. We were trying to figure out  
5 how to get some money sent --

6 THE COURT: I'm sorry. You tried to what?

7 THE WITNESS: Tried to get it set up through Friend  
8 of the Court.

9 THE COURT: To get what set up?

10 THE WITNESS: Income withholding. Up until then,  
11 though, I was trying to figure out a way to actually get it  
12 sent in there, catching up on the utilities and all that. By  
13 the time we had it all set up, I think it was in June that we  
14 had it set up, but we were already making payments before  
15 that, just not regular like we wanted to.

16 BY MS. RATHBURN:

17 Q There was mention that there's arrears there of about \$8,000.  
18 Is that accurate to you?

19 A It's about -- yeah. It's about 8,900 I think, somewhere  
20 around there.

21 Q And there have been show cause hearings that have occurred in  
22 the last few years?

23 A There have been three that I know of.

24 Q And what happened at those show cause hearings?

25 A The first show cause hearing, went in, made a payment. Second

1 show cause hearing I didn't have any money, I went to jail,  
2 got pulled out after three days. The third show cause hearing  
3 I had money to make a payment. We had already made a payment,  
4 though, about two weeks before that, before the show cause  
5 hearing. Sometime after we made that payment, I -- we  
6 received notification of a show cause hearing. I was already  
7 planning on making a payment, but it made it that much easier  
8 to make a payment because I made it right there in cash at the  
9 show cause hearing. I can't remember the exact date of the  
10 show cause hearing, but it was recent.

11 Q Now, have you had other consequences for not paying the  
12 support obligation as ordered?

13 A Yeah. My license was suspended a year, year and-a-half ago,  
14 maybe more.

15 Q Has that been returned to you?

16 A Not yet, but I'm working on it.

17 Q What do you need to do to get your license back?

18 A I believe I have to petition with the court in order to do it.  
19 FOC contacted me back about it, and all I need to do is just  
20 petition the court to get it set up, so that now that I am  
21 paying my child support that I can actually get my license  
22 back.

23 Q There was some testimony by Ms. Merrill that you've actually  
24 lost this job.

25 A I have not lost the job.

1 A Three.

2 Q He was three. And Ms. Merrill testified that you really  
3 didn't have an interest in seeing your son, and so that's why  
4 you got this parenting time schedule. Do you agree with that?

5 A No. I didn't agree that it was going to be that amount  
6 because any more would be too much. I agreed with it because  
7 of the work schedule and his school schedule as well. Three  
8 days seemed fine with me. I don't recall her asking if I  
9 could have more.

10 THE COURT: You don't recall her asking or you  
11 asking?

12 THE WITNESS: Her asking if I wanted more. I don't  
13 recall her asking at all if I wanted more or not, so I just  
14 pretty much agreed with what was on the paper for the  
15 petition.

16 BY MS. RATHBURN:

17 Q And how did it go with exercising that three-day schedule?

18 A It went okay. With a car it was very, very easy. And I still  
19 had my job, so I was able to pay for the gas and everything.  
20 So it was never a problem for me to exercise the three days.  
21 I didn't have a room for him where I was living, so -- and I  
22 wasn't going to press any issues about having him every other  
23 weekend because I understood that, and I wanted to go with  
24 what the petition said.

25 Q When did you start tapering off from the three-day visit?

1 A I think it happened -- that was not after I lost my job. I  
2 think it was after I had my car repossessed, yeah.  
3 Q And at that time were you living in Grand Rapids?  
4 A I think I was living in Comstock Park at the time.  
5 Q And where was Ms. Merrill living?  
6 A She was in Lowell.  
7 Q Was she always in Lowell?  
8 A She used to live on Ada Place, 128 Ada Place Drive, Southeast,  
9 Grand Rapids. That's where I used to live, too.  
10 Q When did she move to Lowell?  
11 A I can't recall. It was around that time, but I can't recall.  
12 Q So when you lost your vehicle and were unable to do these  
13 three day a week schedules, did you communicate that with Ms.  
14 Merrill?  
15 A I believe so.  
16 Q At the time did you think that -- did you ask her to help out  
17 with transportation so that you could continue to see Aidan  
18 the same amount of days?  
19 A I thought about it many, many, many days, but I did remember  
20 what it said on the petition, that I would be providing the  
21 transportation, so I didn't want to press the issue. It said  
22 specifically that I had to provide the transportation.  
23 Q And did you bring any motions with the court to modify  
24 parenting time back then?  
25 A No.

... I might not have any recollection for  
... that happened in 2010 because I didn't print those  
... for --

1 I say, that you don't have them there in front of you?

2 A Yeah, I don't have them in front of me, but I can't remember.

3 All right. Well, with her testimony, and she indicated there  
4 was a visit on January 8th, 3:30 to 6:30 for Christmas, and  
5 then another one on May 10th, a visit from 6:00 to 8:00, would  
6 you have any reason to say that that's incorrect?

10 A No, I think that's about right.

11 Q Did you make any other attempts to contact Aidan other than  
12 those two visits in 2010?

13 A I sent him e-mails. I do recall I called once, but it was  
14 only for a few minutes. He was kind of busy. I can't  
15 remember exactly when that date was when I called, I just -- I  
16 thought I'd call. I regularly was sending e-mails. I think  
17 it was at that time once a month I was trying to send him  
18 something to let him know that I still loved him and that I  
19 cared for him.

20 Q And of those e-mails, do you know if you saved all of them, or  
21 do you have some copies of some of the e-mails?

22 A I'm pretty sure I have all of them, because I think I saved  
23 all of them.

24 Q All right, very good.

25 MS. RATHBURN: Your Honor, I presented Ms. Sobanski

Q Why not?

A I was usually informed here and there, so I felt like I never really had to ask.

Q So you had the information where you could have gone to practice or a recital or a game or things like that?

A Not always. Sometimes it wasn't clear on which days; I just knew that he had these extracurricular activities, but I wasn't really sure on what days here and there.

Q But you never asked?

A I never asked, no.

Q And your main obstacle to seeing your child on a regular basis was transportation?

A That was the main obstacle, yeah. It wasn't the only one, but that was definitely the main one.

Q What were the other ones?

A Finances, not having the money to provide for gas. So even if I had the two cars that I had within the two years, I didn't have the money to be able to put gas in the tank for long trips.

Q And I think Exhibit 3 talks about that to a certain extent. The first e-mail June 20, 2010 to Susan Lyon; I'm assuming that's Ms. Merrill's maiden name, quote: "Very soon I'll be seeing you regularly as I have a new car."

A Yeah.

Q "And in my job I'll be taking a framed picture of you with

1 A Yeah. I lost that because of the car being repossessed.

2 There was no way for me to get out there to Amway.

3 Q And you couldn't find anybody else to drive out there with?

4 A No.

5 Q And why is it that you think it is not in your child's best  
6 interests, and I'm talking his best interests, to have your  
7 parental rights released or terminated?

8 A Why do I think it's not?

9 Q Yes. Why is it not in his best interests?

10 A I would think he just has a right to know his father and how  
11 hard he's worked to try to get back into the ability to see  
12 him as much as possible as the parenting time order would  
13 allow. I tried to put myself into the mind of a child and see  
14 when I grow up I know that my real father tried as hard as he  
15 could to be a part of my life, and now he is.

16 Q Have you ever exercised parenting time consistent with the  
17 judgment of divorce?

18 A Yeah. It was shortly after -- actually it was even before,  
19 because it was already set up and it wasn't legally decreed  
20 yet until I think February. But I moved out back in August,  
21 and I was regularly handling parenting time from that time.

22 Q So you're saying --

23 A It was 2008, yeah.

24 Q All right, because you were divorced in February of 2009.

25 A Right. And I moved out in 2008 in August, and from there it



1 A It will be two years August 1st.

2 Q And so August 1st, two years, that would be 2010?

3 A Two thousand ten.

4 Q And have you been present for Mr. Roustan's visits with Aidan?

5 A Most of them, yes.

6 Q And to your observations, how have those visits gone?

7 A They've gone very well. Aidan seems more than excited to see

8 his father and spend time with him. He loves to spend time

9 with his stepsisters as well. He's such a charismatic young

10 man. He's an amazing little guy, so intelligent and so

11 willing to share information with everybody, just his

12 knowledge of things. He's a great young man, and I love to

13 see the interaction between Pierre and Aidan, it's just --

14 it's awesome.

15 Q Does Aidan act like he knows Pierre, who he is?

16 A Oh, yes, absolutely.

17 Q And how does he refer to Pierre during the visits?

18 A Most of the time on recent visits it's been Daddy Pierre.

19 Q And before that what would he call him?

20 A He would call him daddy or dad, and then as the visits became

21 more sporadic it started becoming Daddy Pierre.

22 Q And did you additionally have communication with Ms. Merrill

23 outside of the e-mails that Mr. Roustan was sending to her in

24 regards to parenting time with Aidan?

25 A Like phone calls or something like that?

1 identify what they are?

2 A These are pictures that I took of Pierre and Aidan and the  
3 girls at our most recent visit with Aidan at the McDonald's in  
4 Lowell.

5 Q And is this -- what was the date of the visit?

6 A I believe this was the July 10th visit.

7 Q And in that picture, the way that -- I know I put a funny one  
8 on top with Pierre making a good face. There's a picture  
9 where Aidan's putting his mouth on Pierre. Is that typical of  
10 how Aidan acts around his father?

11 A Yes, yes, it is.

12 Q I mean, did he act that way in April with his father?

13 A I actually was not there for the April visit, but based on  
14 what I've heard it is, yes.

15 Q Okay. Have you seen other visits prior to --

16 A Yes.

17 Q -- let's say the June 14th date?

18 A Yeah. There was one where we took him to the park and then we  
19 took him out to dinner, and it was the same behavior. He was  
20 very much hanging all over his dad and trying to be as close  
21 to him --

22 Q As he can. Very good.

23 MS. RATHBURN: Your Honor, I'd ask that this be  
24 entered as Exhibit Number 12.

25 THE COURT: Any objection?